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DEBATES

OF

THE TEXAS CONVENTION.

By WM. F. WEEKS, Reporter.

PUBLISHED BY AUTHORITY OF THE CONVENTION.

HOUSTON:
PUBLISHED BY J. W. CRUGER.
1846.

THE STATE LIBRARY
AUSTIN TEXAS

TEXAS STATE LIBRARY
Austin, Texas

TO THE READER.

In passing their judgment upon the merits of this volume, the members of the Convention and the public at large will bear in mind, that it is the work of a single Reporter, and chiefly written out after the adjournment of the Convention, without the benefit of revision by the speakers.

WM. F. WEEKS.

Houston, January 1st, 1846.

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THE STATE LIBRARY
AUSTIN, TEXAS.

DEBATES

OF THE

TEXAS CONVENTION.

By WM. F. WEEKS, Reporter.

PROCLAMATION OF THE PRESIDENT, CALLING A CONVENTION.

By the President of the Republic of Texas,

A PROCLAMATION.

Whereas, the people of Texas have evinced a decided wish that prompt and definite action should be had upon the proposition for annexation, recently submitted by the Government of the United States to this Government, and that a Convention should be assembled for this purpose; and,

Whereas, it is competent for the people alone to decide finally upon the proposition for annexation, and "by deputies in Convention assembled," to adopt a Constitution with a view to the admission of Texas as one of the States of the American Union; and

Whereas, no authority is given by the Constitution of this Republic to any branch of the Government to call a Convention, and to change the organic law, this being a right reserved to the people themselves, and which they alone can properly exercise;

Therefore, be it known, that I, ANSON JONES, President of the Republic of Texas, desirous of giving direction and effect to the public will, already so fully expressed, do recommend to the citizens of Texas, that an election for "Deputies" to a Convention be held in the different counties of the Republic, on Wednesday, the fourth day of June next, upon the following basis, viz: Each county in the Republic to elect one Deputy, irrespective of the number of voters it contained at the last annual elections. Each county voting at that time three hundred and less than six hundred, to elect two Deputies. Each county voting at that time six hundred and less than nine hundred, to elect three Deputies; And each county voting at that time nine hundred and upwards, to elect four Deputies. which basis will give to the county of Austin, two; Bastrop, one; Bexar, two; Brazoria, two; Brazos, one; Bowie, one; Colorado, one; Fayette, two; Fannin, two; Fort Bend, one; Goliad, one; Galveston, two; Gonzales, one; Harris, three; Harrison, three; Houston, two; Jackson, one; Jasper, one; Jefferson, one; Lamar, two; Liberty, two; Matagorda, one; Montgomery, four; Milam, one; Nacogdoches, three; Red River, three; Robertson, two; Rusk, one; Refugio, one; Sabine, one; San Augustine, two; Shelby, two; San Patricio, one; Travis, one, Victoria, one; and Washington, three Deputies: and that the said Deputies so elected, do assemble in Convention at the city of Austin, on the "Fourth of July" next, for the purpose of considering the proposition for the annexation of Texas to the United States, and any other proposition which may be made concerning the nationality of the Republic: and, should they judge it expedient and proper, to adopt, provisionally, a Constitution to be submitted to the people for their ratification, with a view to the admission of Texas as a state into the North American Union, in accordance with the terms of the proposition for annexation, already submitted to this Government by that of the United States. And the Chief Justices of the respective counties aforesaid, will give due notice of the said elections, appoint a presiding officer in the several precincts, who will appoint the Judges and Clerks of said elections, and have the same conducted according to the Constitution and Laws regulating elections, and make due return thereof.

In testimony whereof, I have caused the Creat Seal of the Pepublic to be hereunto affixed.

{ L. S }

Done at Washington, this fifth day of May, in the year of our Lord one thousand eight hundred and forty-five, and of the Independence of the Republic the tenth.

ANSON JONES.

By the President,
EBEN'R ALLEN,
Attorney General and
Acting Sec'y of State.

THE S[illegible] ARY
AUSTIN TEXAS

Friday, July Fourth, A. D. 1845.

This being the day recommended by the President of the Republic of Texas, in his Proclamation bearing date the fifth day of May, A. D 1845, for the assembling of Delegates in Convention for the purpose of considering the proposition for the annexation of Texas to the United States, and any other proposition which might be made concerning the nationality of the Republic, and of adopting, provisionally, a Constitution to be submitted to the people for their ratification, with a view to the admission of Texas as a State into the North American Union, the Convention met accordingly at the City of Austin, in the Republic of Texas.

On motion of Mr. Isaac Parker, a Delegate from Houston county, Mr. Abner S Lipscomb, a Delegate from Washington county, was called to the chair, as President *pro tem.*

On motion of Mr. John Hemphill, a Delegate from Washington county, Mr James H. Raymond was appointed Secretary *pro tem.*

On motion of Mr. Hemphill, it was

"*Resolved*, That the call of Deputies be made by counties; and that the Deputies present provided with their credentials, be requested to deliver them to the Secretary *pro tem*"

The counties being called, alphabetically, the following Delegates presented their credentials, viz:

From the county of Austin—Phil M. Cuney.
Brazoria—H. G. Runnels, Robt. M. Forbes.
Brazos—Sam. Lusk.
Bastrop—John Caldwell.
Bexar—José Antonio Navarro.
Colorado—Geo. Wm. Brown.
Fannin—Gustavus A Everts, Lemuel Dale Evans.
Fort Bend—J B. Miller.
Fayette—R E. B. Baylor, James S. Mayfield.
Galveston—R. Bache, James Love.
Goliad—Wm. L Hunter.
Gonzales—John D. Anderson.
Houston—Isaac Parker, P. O. Lumpkin.
Harris—Francis Moore, jr., I. W. Brashear, Alex McGowan.
Harrison—Isaac Van Zandt, S. Holland, Edwd Clark.
Jasper—Geo. W. Smyth.
Jefferson—James Armstrong.
Jackson—Francis M. White.
Liberty—James Davis, Geo. T. Wood.
Lamar—Geo. W. Wright. H. R. Latimer.
Montgomery—John M. Lewis, James Scott, Archibald McNeill.
Matagorda—A. C. Horton.
Milam—Israel Standefer.

Nacogdoches—Thos J. Rusk, Jos. L Hogg, Chas. S. Taylor.
Rusk—David Gage.
Robertson—Henry J. Jewett.
Refugio—James Power.
Red River—Albert H Latimer, Wm. C. Young.
San Augustine—J. Pinckney Henderson, Nicholas H. Darnell.
Shelby—Emery Rains, A. W. O Hicks.
Sabine—James M. Burroughs.
San Patricio—H. L. Kinney.
Travis—Wm. L Cazneau.
Victoria—A. S. Cunningham.
Washington—Abner S. Lipscomb, John Hemphill, Van R. Irion.

On motion of Mr. Hemphill, it was ordered that the roll be called, and the Delegates answer to their names; when the following members were shown to be present, viz: Messrs. Anderson, Armstrong of Jeff., Armstrong of Robertson, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evetts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Latimer of Red River, Latimer of Lamar, Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Taylor, Van Zandt, White, Wood, Wright and Young.

On motion of Mr. Mayfield, it was ordered that the Convention do now proceed to the election of a President of the Convention.

Mr. Runnels put in nomination Thos. J. Rusk.

There being no other nominee, Mr. Rusk was declared duly and unanimously elected President of the Convention.

The President elect being thereupon conducted to the chair, addressed the Convention as follows:

Gentlemen of the Convention:

Language would fail me, were I to attempt an expression of my feelings, in being thus, unsought by me, elevated to the position which I now occupy as the President of this honorable Convention, to whose hands is confided the dearest interest of the people of Texas, and whose action upon this occasion I am satisfied will not disappoint the just expectations of the friends of Republican Government. My pursuits in life have not thrown me into situations to become acquainted with the rules of proceedings acted upon by bodies of this kind; and I must in advance ask the indulgence of the Convention towards the errors and mistakes which, I have no doubt, I shall unintentionally fall into. The objects for which we have assembled deeply interest the people of Texas. We have the hopes of our present population as well as the millions who may come after us in our hands. The eyes of the civilized world are upon us. We present this day a bright spectacle to all lovers of freedom and Republican Government.

The history of the world may be searched in vain for a parallel to the present instance of two governments amalgamating themselves into one, from a pure devotion to that great principle—that man, by enlightening his intellect and cultivating those moral sentiments with which his God has impressed him, is capable of self government

The terms of annexation are alike honorable to the United States and to Texas; and, as a Texian, acting for myself and my posterity, I would not, were it practicable, without in the slightest degree endangering the great question involved, seek to alter the terms proposed to us by the Government of the United States. Texas, animated by the same spirit, and following the bright example of the fathers of the American revolution, has acquired at the cost of blood her freedom and independence from those who would have enslaved her people. She now, with a unanimity unparalleled, enters that great confederacy, to whose keeping the bright jewel of human liberty is confided, content to bear the burthens and share the benefits which Republican Government carries in her train.

Our duties here, although important, are plain and easy of performance. The formation of a State Constitution upon Republican principles is the only act to be performed to incorporate us into the American Union. While we insert those great principles which have been sanctioned by time and experience, we should be careful to avoid the introduction of new and untried theories. We should leave those who are to follow us free to adopt such amendments to the system as their experience and intelligence shall suggest, and their circumstances render necessary.

We have one grand object in view; and that is to enter the great American confederacy with becoming dignity and self respect. Let us then lay aside all minor considerations, and avoid all subjects calculated to divide us in opinion, and march boldly and confidently up to the formation of a Constitution, which, while it secures our own rights, shall satisfy our friends abroad, and meet the sanction of that God to whose bountiful protection Texas is already so much indebted.

The Rev. Chauncey Richardson, by invitation, then addressed the throne of grace in a fervent and appropriate prayer.

On motion of Mr. Van Zandt, it was ordered that the Convention proceed to the election of a Secretary to the Convention.

Mr. Van Zandt nominated Mr. James H. Raymond. Mr. Lipscomb nominated Mr. Joseph Waples.

Mr. Raymond having received a majority of the votes on the first ballot, was declared duly elected Secretary of the Convention.

The Convention being duly organized, proceeded to business.

On motion of Mr. Cazneau, Mr. Navarro was granted permission to engage the services of an Interpreter.

Mr. Lipscomb offered the following resolution, viz..

"*Resolved*, That a committee of fifteen be appointed for the purpose of reporting an Ordinance, expressing the assent of this Convention to the propositions made by the President of the United States for the admission of Texas as a State into the Federal Union."

Read and laid on the the table.

The President informed the Convention that a communication from the President of the Republic of Texas, addressed to the President of the Convention, had been placed upon his table.

On motion of Mr. Van Zandt, the communication of his Excellency the President was taken up, and read as follows:

Executive Department,
Washington, June 28, 1845.

To the President and members of the Convention to assemble at Austin on the fourth of July next:

Gentlemen—In compliance with one of the provisions of a Joint Resolution of the present Congress, entitled "A Joint Resolution giving the consent of the existing government to the annexation of Texas to the United States," approved on the third inst, I now have the honor to transmit you a copy of the said Joint resolution properly authenticated at the State Department.

Believing the Convention might have use for them, I also transmit herewith transmit copies similarly authenticated of the following official documents:

1. Joint Resolution for annexing Texas to the United States, approved March 1st, 1845;
2. A Proclamation recommending the election of Deputies to the Convention, issued by me on the 5th of May last;
3. A Proclamation declaring to the people of Texas the actual situation of their affairs, with respect to Mexico, and a cessation of hostilities between the two countries,—issued by me on the 4th inst.;
4. Conditions Preliminary to a Treaty of Peace between Mexico and Texas,—signed by the former at the City of Mexico on the 19th of May last, and since rejected by the Senate of Texas, together with the correspondence in relation to the same;
5. A communication under date of the 26th inst, from the Hon. E. Allen, Attorney General of the Republic of Texas, charged *ad interim* with the direction of the Department of State, to the Hon. A. J. Donelson. Chargé d'Affaires of the United States, on the subject of a probable renewal of hostilities by Mexico, and the consequent introduction of the U. States troops for the defence of the country;
6. Copies of two communications from the State Department to Mr. Ashbel Smith, dated 10th of May and 26th of June, 1845; and

THE STAT

7. Joint Resolution relative to the introduction of United States troops, and for other purposes.

I have the honor to be, Gentlemen, with the greatest respect, your most obedient servant,

(Signed,) ANSON JONES.

On motion of Mr. Mayfield, the Convention dispensed with the reading of the accompanying documents, with the exception of the Joint Resolution annexing Texas to the United States, and the communication and documents were laid on the table for the present.

On motion of Mr. Gage, the resolution offered by Mr. Lipscomb, for the appointment of a committee of fifteen, was taken from the table, read and adopted.

Whereupon the President appointed the following members to compose the committee, viz.: Messrs. Lipscomb, Moore, Caldwell, Everts, Love, Van Zandt, Henderson, Cazneau, Evans, Runnels, Hemphill, Lewis, Baylor, Davis and Smith.

On motion of Mr. Mayfield, the communication of his Excellency the President, together with the documents accompanying, were referred to the above appointed committee.

The special committee, after an absence of some time, returned, and through their chairman made the following report:

Committee Room, July 4th, 1845.

To the Hon. Thos. J. Rusk,
President of the Convention:

The committee to whom was referred the communication of his Excellency the President of the Republic, together with the accompanying documents, have had the same under consideration, and have instructed me to report the following Ordinance, and recommend its adoption by the Convention.

(Signed,) ABNER S. LIPSCOMB,
Chairman.

AN ORDINANCE.

Whereas, the Congress of the United States of America has passed resolutions providing for the annexation of Texas to that Union, which resolutions were offered by the President of the United States on the first day of March, 1845; and

Whereas, the President of the U. States has submitted to Texas the first and second sections of the said resolution as the basis upon which Texas may be admitted as one of the States of the said Union; and

Whereas the existing government of the Republic of Texas has assented to the proposals thus made,—the terms and conditions of which are as follow:

TEXAS STATE LIBRARY
Austin, Texas

JOINT RESOLUTION FOR ANNEXING TEXAS TO THE UNITED STATES.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to, the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. *And be it further resolved*, That the foregoing consent of Congress is given upon the following conditions, to wit: *First*—said State to be formed subject to the adjustment by this Government of all questions of boundary that may arise with other governments,—and the Constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, 1846. *Second*—said State, when admitted into the Union, after ceding to the United States all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks, magazines and armaments, and all other means pertaining to the public defence, belonging to the said Republic, shall retain all the public funds, debts, taxes and dues of every kind which may belong to or be due and owing to the said Republic: and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Third*—New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution; and such States as may be formed out of that portion of said territory lying south of thirty six degrees thirty minutes, north latitude, commonly known as the Missouri Compromise Line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire: and in such State or States as shall be formed out of said territory north of said Missouri Compromise Line, slavery, or involuntary servitude (except for crime,) shall be prohibited."

Now, in order to manifest the assent of the people of this Republic, as is required in the above recited portions of said resolutions, we, the Deputies of the people of Texas in Convention assembled, in their name and by their authority, do ordain and declare that we assent to, and as-cept the proposals, conditions and guarantees contained in the first and second sections of the Resolution of the Congress of the U. States aforesaid.

[Here follow the names of the Delegates.]

Mr. Mayfield moved the adoption of the Ordinance: upon which question the ayes and noes were taken, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R., Latimer of L., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Taylor, Van Zandt, White, Wood, Wright and Young—55.

No—Mr. Bache—1.

So the Ordinance was adopted.

On motion of Mr. Mayfield, it was ordered that the Ordinance be signed by the President and members of the Convention, and attested by the Secretary of the Convention.

Mr. Jewett offered the following resolution:

Resolved, That a committee of five be appointed, to prepare standing rules for conducting the business of the Convention. Adopted.

Whereupon, the President appointed Messrs. Jewett, Darnell, Van Zandt, Latimer and Caldwell, as said committee.

Mr. Jewett offered the following resolution.

Resolved, That the Rules of the House of Representatives, for the government of said House, at the 9th Congress, shall be adopted; and govern the deliberations of this Convention, so far as applicable, until such time as the committee appointed to draft rules, may report the same. Adopted.

On motion of Mr. Davis, it was ordered that copies of the Ordinance adopted by this Convention, giving its assent to the annexation of Texas to the Government of the United States, be, by the President of this Convention transmitted to the President of this Republic; and that he be requested to transmit an authenticated copy of the same to the President of the United States; also, the President of the Convention to transmit to Maj. A. J. Donelson, Chargé of the United States near this Republic, a copy of the same—to be, by him, communicated to his Government.

Mr. Love offered the following resolution:

Resolved, That the members of this Convention wear crape on their left arm, for one month, as a testimony of their regret for the decease of GEN. ANDREW JACKSON. Unanimously adopted by the Convention.

On motion of Mr. Van Zandt, it was ordered that a copy of the above resolution, signed by the President and Secretary of the Convention, be transmitted to the family of Gen. Andrew Jackson, deceased.

On motion of Mr. Hemphill, the Convention adjourned until to-morrow morning, 10 o'clock.

Saturday, 5th July, 1845.

The Convention met pursuant to adjournment.

Prayer by the Rev. Chauncey Richardson.

Mr. Caldwell offered the following Ordinance:

AN ORDINANCE

Relative to the introduction of the United States' Troops into Texas.

Whereas, the Government of the United States having passed resolutions, by which Texas may be annexed and incorporated into the American Union; and

Whereas, the Delegates of the people, in Convention assembled, having acceded to the proposals submitted by the President of the United States, to the Government of Texas—and by said Government submitted to the people thereof, and to this Convention; and

Whereas, there are many tribes of Indians, belonging to the United States of America, located within, and adjacent to, the territory of Texas; therefore, for the security and tranquility of our frontier,

Be it ordained by the Delegates of the people in Convention assembled, That the President of the U. States be, and he is, hereby, requested, to occupy, without delay, the frontier of this Republic, with such troops as may be necessary for its defence; and the President of Texas is requested to make known the same to the Government of the United States, through their representative near this Republic,

Read first time.

On motion, rule suspended—read second time; and,

On motion of Mr. Gage, referred to a special committee, composed of Messrs. Gage, Mayfield, Caldwell, Cazneau, Lewis, Hemphill, Young, Hunter, Anderson and Cunningham,

On motion of Mr. Jewett, the Convention proceeded to its further organization.

Mr. Hemphill nominated for Assistant Secretary, Thomas Green. Mr. Anderson nominated A. W. Luckett. Mr. Wright nominated Jas. S. Gillett. The Convention then proceeded to ballot; and Mr. Green having received a majority of all the votes given, upon the first balloting, was declared duly elected 1st Assistant Secretary of the Convention.

The Convention proceeded to the election of 2d Assistant Secretary. Mr Bache nominated P. M. Humphreys. Mr Henderson nominated J. M. Swisher. Mr Swisher having received a majority of all the votes given, upon the first balloting, was declared duly elected 2d Assistant Secretary.

The Convention then proceeded to the election of Sergeant-at-Arms. Mr. Lumpkin nominated Mr. McKnight. Mr Runnels nominated J. M. Floyt. Mr Brashear nominated D D. Culp. Mr. Jewett nominated James Neely. Mr Smyth nominated J. C. Alexander. Mr. Lipscomb nominated S. W. Pipkin. Mr. Neely having received a majority of all the votes given, upon the fifth balloting, was declared duly elected Sergeant at-Arms for the Convention.

The Convention then proceeded to the election of a Door-keeper. Mr. Brown nominated James A. Young: Mr. Wood, Wm. Cockburn: and Mr. Kinney, F. Hughes. Mr. Cockburn having received a majority of all the votes given, upon the first balloting, was declared duly elected Door-keeper for the Convention.

The Convention then proceeded to the election of a Chaplain. Mr. Gage nominated Mr. Haynie. Mr. Parker nominated Mr. Morrill. Mr. Haynie having received 33 votes, was declared duly elected elected Chaplain for the Convention.

Mr. Jewett offered the following resolution:

Resolved, That the President appoint the following standing committees:

1. Committee on the State of the Nation.
2. " " Executive Department.
3. " " Legislative "
4. " " The Judiciary.
5. " " The General Provisions of the Constitution.
6. " " Privileges and Elections.
7. " " Printing.

Mr. Brown offered the following amendment, by way of substitute:

Resolved, That a committe of fifteen be appointed to enquire and report what method will be most expedient, in bringing before this Convention, the business on which it has convened.

Mr. Cazneau moved to refer the resolution and amendment to the Committee on Rules; which motion was lost.

The question was then taken on the adoption of the amendment of Mr. Brown, and lost

The vote was then taken on the resolution of Mr. Jewett, and carried.

Mr. Burroughs moved that the Committee on Privileges and Elections consist of thirteen members. Lost.

Mr Kinney moved that the President have discretionary power, to appoint whatever number he may please.

Mr Van Zandt moved that [illegible] members be appointed on said committee. Lost.

On motion of Mr Lipscomb, nine members were appointed on said committee; whereupon the President announced the following standing committee on Privileges and Elections:

Messrs. Miller, Evans, Forbes, Cunningham, Darnell, Lumpkin, Wright, M'Neill and Armstrong of J.

Mr. Burroughs presented the petition of Mr Jefferson Oliver, praying to be admitted as a member of this body, from the county of Sabine; which was referred to the committee on Privileges and Elections.

Mr. Young presented the memorial of Wm B Ochiltree, contesting the seat of Chas. S. Taylor, as one of the delegates from the county of Nacogdoches; which, on motion of Mr Parker, was referred to the committee on Privileges and Elections.

On motion of Mr. Mayfield, the election returns of the county of Nacogdoches were also referred to the same committee.

Mr Bache presented the memorial of the citizens of Galveston county, in behalf of Memucan Hunt, praying that he might be admitted as a member of this body; which was referred to the committee on Privileges and Elections.

On motion of Mr. Cazneau, the resolution of Mr. Jewett, forming standing committees, was taken up.

Mr. Cazneau moved that the committee on the State of the Nation consist of fifteen members. Carried.

On motion of Mr. Cazneau, the committee on the Executive Department was filled with nine members; Legislative Department with fifteen members; and Judiciary with fifteen members.

On motion of Mr. Moore, the committee on General Provisions of the Constitution was filled with fifteen members.

Mr Cazneau moved that the committee on Printing consist of five members. Carried.

On motion of Mr. Lipscomb, the Convention adjourned until Monday morning, 8 o'clock.

Monday morning, July 7th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The President announced the following standing committees:

State of the Nation—Messrs. Caldwell, Smyth, Armstrong of R, Baker, Brashear, Gage, Hicks, Howard, Holland, Kinney, Lipscomb, Lumpkin, Latimer of L., Moore and Jewett.

Executive—Messrs. Davis, Burroughs, Hunter, [illegible], Lewis, McGowan, Navarro, Parker and Power.

Legislative—Messrs. Runnels, Caldwell, Cazneau, Cunningham, [illegible], Darnell, Evans, Forbes, [illegible], Latimer of R. R., [illegible], [illegible] and Wright.

Judiciary—Messrs. Hemphill, Lipscomb, [illegible], Baker, [illegible], Brown, Henderson, Mayfield, [illegible], Van Zandt, [illegible], [illegible], J. Young, Hogg and Love.

General Provisions of the Constitution—Messrs. Van Zandt, Horton, Clark, Holland, Lewis, Love, [illegible], Moore, [illegible], McNeill, Rains, Smyth, Standefer, Tarrant and Wood.

Printing—Messrs. Parker, Power, Love, [illegible] and [illegible].

Mr. Van Zandt presented the memorial of John G. [illegible], of Bowie county, praying to be admitted as a member of this body. Referred to the committee on Privileges and Elections.

Mr. Navarro reported that he had selected, as Interpreter, Mr. Geo. Fisher, of Houston. Report adopted.

A communication, dated Austin, July 6th, 1845, was received from Maj. A. J. Donelson, Chargé d'Affaires of the United States, acknowledging the receipt of a copy of the Ordinance of this body, assenting to the annexation of Texas to the United States; which was read, and ordered to be spread upon the journals.

The Chairman of the committee on Privileges and Elections made the following report:

Committee Room, July 7, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

Your committee, to whom was referred the memorial of the citizens of Galveston, asking that Memucan Hunt be admitted to a seat in this Convention, as a third delegate from Galveston county; and of Jefferson W. Oliver, of the county of Sabine, praying that he be admitted to a seat in this Convention, as an additional delegate from the said county of Sabine, have had the same under consideration, and ask leave to make the following report:

After due consideration of the reasons urged by the memorialists, and a careful examination of the evidences upon which they, respectively, found their claims to additional representation, your committee are fully persuaded that, in making up their decision, they cannot go beyond the proclamation of the President, apportioning the number of delegates; for, however informal and without authority the action of the President may have been, its ratification by the legislative department of the government, and general acceptance by the people, have clothed the same with all the force and effect of a law of the land.

Your committee are, therefore, of opinion, that neither the county of Galveston or Sabine, is entitled to a further representation in this Convention; and that the prayer of the memorialists should not be granted.

J. B. MILLER, Chairman.

Report ordered to lay on the table until to-morrow.

Mr. Gage, Chairman of the select committee to whom was referred the Ordinance relative to the introduction of U. S. troops into Texas, reported a substitute.

RESOLUTION

Relative to the introduction of the United States' forces into Texas.

Be it resolved by the Deputies of the People in Convention assembled, That the President of the United States of America is, hereby, authorized and requested, to occupy and establish posts, without delay, upon the frontier and exposed positions of this Republic; and to introduce for such purpose, and the defence of the territory and people of Texas, such forces as may be necessary and advisable for the same: and the President of the Convention is requested to make known the same to the Government of the United States, through the accredited Minister of that Government, near this Republic.

The ayes and noes were taken upon its adoption.

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham. Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Hogg, Holland, Hunter, Irion, Jewett, Kinney, Latimer of L. Latimer of R. R. Lewis, Love, Lumpkin, Lipscomb, Mayfield. McGowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Taylor, Van Zandt, White. Wood, Wright and Young—54.

No—Mr Evans—1

A copy of said resolution was ordered to be transmitted to the President of Texas.

Mr. Everts presented the memorial of Horace Bunham, from the Trinity colony, praying to be admitted as a member of this body. Referred to committee on Privileges and Elections.

The Convention adjourned until to-morrow morning.

Tuesday morning, July 8th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Jewett, from the select committee for that purpose, reported rules for conducting business before the Convention.

On motion of Mr. Love, it was

Resolved, That the committee on General Provisions be instructed to report a Bill of Rights, to be prefixed to the Constitution.

On motion of Mr. Clarke, it was

Resolved, That the President appoint a standing committee upon the subject of Education—committee to consist of 7.

The report of the committee on Privileges and Elections, on the memorials of the citizens of Galveston and J. W. Oliver, was taken up, and adopted by ayes 51, noes 2.

On motion of Mr. Navarro, Mr. Volney E. Howard, delegate from the county of Bexar, came forward, presented his credentials, and took his seat.

On motion, Messrs. Hemphill and Caldwell were instructed to wait upon the Hon. A J. Donelson, and invite him to a seat within the bar.

Mr. Henderson offered the following resolution, expressive of the gratitude of this Convention, to Ex-President Tyler and his cabinet:

Resolved, That the early and resolute stand taken by John Tyler, whilst he was President of the United States, to restore Texas to the bosom of the republican family, has secured to him the gratitude and veneration of the people of Texas.

Resolved, That the like sentiments are due to the assistance afforded Mr. Tyler, by the able members of his cabinet,—who, with a noble enthusiasm, espoused the cause of annexation as a national question; and co-operated faithfully, in securing its consummation, by the passage of the law which has enabled the people of Texas to become a portion of the Union.

Resolved, That the President of this Convention be directed to furnish a certified copy of these resolutions to Mr. Tyler, and to each of the members of his cabinet, viz: Hon. J. C. Calhoun, Geo M. Bibb, Wm. Wilkins, John Y. Mason, John Nelson, Chas. A. Wickliffe; and to the family of A. P. Upshur, deceased; and to the family of G. W. Gilmer, deceased; which was unanimously adopted.

Mr. Miller, from the committee on Privileges and Elections, to whom was referred the memorial of Wm. B. Ochiltree, claiming the seat now occupied by Chas. S. Taylor, of Nacogdoches, reported in favor of the memorialist, and recommended the passage of the following resolution:

Resolved by this Convention, That Wm. B. Ochiltree, having received the highest number of votes given by the citizens of Nacogdoches, at the late election for delegates, is, therefore. entitled to the seat now occupied by the Hon. Chas. S. Taylor.

J. B. MILLER, Chairman.

Laid on the table.

On motion, the member from Bowie, Mr. Tarrant, came forward and took his seat.

Adjourned until to morrow morning, 8 o'clock.

Wednesday morning, July 9, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Lewis offered the following resolution:

Resolved, That the Executive Committee be instructed to digest and report to the Convention, a plan or system for the organization of the militia of the State of Texas. Adopted.

The Convention then proceeded to the

ORDERS OF THE DAY.

The President laid before the Convention the Rules reported by the committee on that subject; which, on motion, were read, article by article; and, with the exception of the 8th, 9th, 20th and 37th, adopted.

On motion of Mr. Lipscomb, the 8th rule was so amended, as to strike out all that portion which required the Secretary to take an oath for the faithful performance of the duties of his office; and, on motion of the same, the 9th rule was amended in like manner, exempting the Sergeant-at-Arms and Door-keeper from taking an oath of office.

In rule 21, Mr. Moore moved that it be so amended, as to require only a majority of the Convention to excuse a member from voting, instead of the unanimous consent, as the rule expresses.

Mr. Caldwell moved, by way of substitute, that two-thirds be required to excuse a member from voting: which was carried.

On motion of Mr. Love, a separate journal of the committee of the whole was ordered to be kept.

On motion of Mr. Gage, it was

Resolved, That the committee on Public Printing be instructed to contract for the printing of —— copies of the rules adopted for the government of this Convention, for the use of the members and officers of the same.

Rule suspended, blank filled with 100, and adopted.

The Convention adjourned until to-morrow morning, 8 o'clock.

Thursday morning, July 10th, 1845.

The Convention met pursuant to adjournment.

The President announced the following committee on Education:—Messrs. Clarke, Moore, Henderson, Howard, Tarrant, Baylor and Love.

The Committee on Privileges and Elections reported the following resolution:

Resolved, That John G. Chambers is not entitled to a seat in this House, from the county of Bowie.

Laid on the table.

Mr. Mayfield introduced the following resolution:

Resolved, That a select committee be appointed by the President of the Convention, whose duty it shall be to enquire into the expediency of ceding and granting to the United States of America, the authority forthwith to occupy and enjoy for the use of the United States forces, all public edifices, fortifications, barracks, ports and harbors, navy and navy yards, docks and magazines, and all other property and means pertaining to the public defence, belonging to said Republic, exclusive of all arms, armaments, ammunition and munitions of war, which shall be reserved by said Republic until the act of annexation is consummated. And further, to enquire into the expediency of vesting the Legislature of the State with the power of ceding and granting to the government of the United States ——— acres of land upon the western, south-western and northern frontiers and boundaries of the Republic, for the purpose of erecting and establishing ports, harbors, forts, barracks and fortifications upon the Rio Grande, and on the line of frontier from said boundary, through or above the Cross Timbers to the Red River; and also the propriety of vesting the Legislature with the power of ceding and granting to the government of the United States, the public domain of Texas, upon the condition of the assumption of the public debt, and making ample provision for common school and educational purposes, and that the United States pay the expenses incidental to annexation; and of vesting the Legislature with power to ascertain the amount and character of the public debt.

Laid on the table one day for consideration.

Mr. Parker presented his credentials as a Delegate from Houston county. Referred to the committee on Privileges and Elections.

The question was taken upon the resolution of the committee on Privileges and Elections, relative to the contested election between the Hon. Wm. B. Ochiltree and the Hon. Chas. S. Taylor, of Nacogdoches, and resulted as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bache, Brashear, Burroughs, Cunningham, Cuney, Davis, Evans, Everts, Forbes, Hemphill. Henderson, Hogg, Howard, Hunter, Irion, Jewett, Latimer of R. R., Lewis, Love, Lipscomb, McGowan, M'Neill, Miller, Moore, Parker, Rains, Runnels, Smyth, Standefer, Tarrant, White, Wright and Young—36.

Noes—Messrs. Armstrong of R., Baylor, Brown, Caldwell, Cazneau, Clark, Darnell, Gage, Hicks, Horton, Holland, Kinney, Latimer of L., Lumpkin, Mayfield, Navarro, Power, Scott, Van Zandt and Wood—20.

Mr. Ochiltree was then invited to take his seat in the place of Mr. Taylor.

Mr. Henderson, after a few appropriate remarks, offeree the following resolution:

Whereas, the members of this Convention have learned with emotions of the most profound sorrow, of the death of their distinguished fellow citizen, the Hon. KENNETH L. ANDERSON, Vice President of the Republic of Texas; be it, therefore,

Resolved, That the members of this convention will wear the usual badge of mourning for the space of thirty days, as a testimonial of their profound respect for the deceased.

Resolved, that the Secretary furnish the family of the deceased with a copy of these resolutions, signed by the President and Secretary of the Convention.

As a further testimonial of respect for the memory of the deceased, on motion of Mr. Lipscomb,

The Convention adjourned until to-morrow morning, half past 8 o'clock.

Friday morning, July 11, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Van Zandt, from the committee on Bill of Rights and General Provisions, made the following report:

Committee Room, Austin,
July 11th, 1845.

To the Hon. THOMAS J. RUSK,
President of the Convention:

The committee, to whom were referred the Bill of Rights and General Provisions of the Constitution, have had the former under consideration; and have given it that investigation and deliberation which its importance seems to demand; and with the design to secure the great and fundamental principles of liberty, have agreed to the following, which they have instructed me to report to the Convention, and recommend its adoption.

ISAAC VAN ZANDT,
Chairman of the committee.

BILL OF RIGHTS.

That the general, great, and essential principles of Liberty and Free Government may be recognized and established, we declare:

ARTICLE

1st. That all political power is inherent in the people; and all free governments are founded on their authority, and instituted for their benefit; and they have, at all times, the unalienable right to alter, reform, or abolish, their form of government, in such manner as they may think expedient.

2nd. All freemen, when they form a social compact, have equal rights; and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

3d. No religious test shall be required, as a qualification to any office or public trust, under this State.

4th. All men have a natural and indefeasible right to worship God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious societies, or modes of worship.

5th. Every citizen shall be at liberty to speak, write, or publish, his opinions, on any subject,—being responsible for the abuse af that privilege; and no law shall ever be passed, curtailing the liberty of speech, or of the press.

6th. In all prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

7th. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue, without describing them, as near as may be; nor without probable cause, supported by oath or affirmation.

8th. Prosecutions shall be by indictment, or information. The accused shall have a speedy public trial, by an impartial jury: he shall not be compelled to give evidence against himself: he shall have the right of being heard by himself or counsel, or both: shall be confronted with the witnesses against him; and shall have compulsory process for obtaining witnesses in his favor.

9th. All prisoners shall be bailable, by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; but this provision shall not be so construed as to prohibit, after indictment found, an examination of the evidence by a judge of the supreme or district court, upon a writ of *habeas corpus*, returnable in the county where the offence is committed.

10th. The privilege of the writ of *habeas corpus* shall not be suspended—except, when in case of rebellion or invasion, the public safety may require it.

11th. Excessive bail shall not be required, nor excessive fines imposed; or cruel or unusual punishment inflicted. All courts shall be open; and every man, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law.

12th. No person, for the same offence, shall be twice put in jeopardy of life or limb; and the right of trial by jury, shall remain inviolate.

13th. No bill of attainder, *ex post facto* law, or any law impairing the obligation of contracts, shall be made; nor vested rights be divested, unless for purposes of public utility, and for adequate compensation previously made.

14th. No person shall ever be imprisoned for debt.

15th. No citizen of this State shall be deprived of life, liberty, property, or privileges, outlawed, exiled, or in any manner disfranchised, except by due course of the law of the land.

16th. Emigration from this State, shall not be prohibited.

17th. The military shall, at all times, be subordinate to the civil authority.

18th. Those who conscientiously scruple to bear arms in the public defence, shall not be compelled to do so, but shall pay an equivalent for personal service.

19th. Perpetuities or monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments, ever be in force in this State.

20th. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

21st. No power of suspending laws, in this State, shall be exercised, except by the General Assembly, or its authority.

22d. To guard against transgressions of the high powers herein delegated, we declare that every thing in this Bill of Rights is excepted

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out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or to the following provisions, shall be void.

On motion of Mr. Runnels, 500 copies of the report were ordered to be printed.

On motion of Mr. Caney, the Hon Oliver Jones, one of the delegates from the county of Austin, was invited to take his seat, as a member of the Convention.

Mr. Davis, chairman of the committee on the Executive Department, made the following report:

Committee Room, July 11, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The committee, to whom was referred that portion of the Constitution which pertains to the Executive Department, have had the same under consideration, and have instructed me to make the following report.

JAMES DAVIS, Chairman.

EXECUTIVE DEPARTMENT.

Sec. 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Texas.

Sec. 2. The Governor shall be elected by the qualified electors, at the time and places when they shall respectively vote for representatives.

Sec. 3. The returns of every election for Governor shall be sealed up, and transmitted to the Seat of Government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them, in presence of both Houses of the General Assembly. The person having the highest number of votes shall be Governor, but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of both Houses. Contested elections for Governor shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

Sec. 4. The Governor shall hold his office for the term of four years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of eight years; he shall be at least thirty years of age, shall be a native citizen of the United States, or a citizen of the State of Texas, at the time of the adoption of this Constitution.

Sec. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

Sec. 6. The Governor shall be Commander-in-Chief of the army and navy of this State and the militia, except when they shall be called into the service of the United States.

Sec. 7. He may require information, in writing, from the officers in the Executive Department, on any subject relating to the duties of their respective offices.

Sec. 8. He may, by proclamation, on extraordinary occasions, convene the General Assembly at the Seat of Government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two Houses, with respect to the adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the General Assembly.

Sec. 9. He shall, from time to time, give to the General Assembly, information of the state of the government, and recommend, to their consideration, such measures as he may deem expedient.

Sec. 10. He shall take care that the laws be faithfully executed.

Sec. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In case of treason, he shall have power, by and with the advice and consent of the Senate, to grant reprieves and pardons, and he may, in the recess of the Senate, respite the sentence until the end of the next session of the General Assembly.

Sec. 12. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and the present seal of this Republic shall be the seal of the State, by substituting the word "State" for that of "Republic."

Sec. 13. All commissions shall be in the name, and by the authority of the State of Texas, be sealed with the State seal, signed by the Governor, and attested by the Secretary of State.

Sec. 14. There shall be a Secretary of State elected by the qualified electors of the State, who shall continue in office during the term of four years. He shall keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before the General Assembly; and shall perform such other duties as may be required of him by law.

Sec. 15. Whenever a vacancy may happen in the office of Secretary of State, Treasurer, or Comptroller, the Governor shall fill such vacancy, for the time being, and should there remain six months of the unexpired term, the Governor shall issue his writ of election, giving thirty days notice to fill such vacancy; and the person so elected shall hold the office for the unexpired term.

Sec. 16. Every bill which shall have passed both Houses of the

General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections, to the House in which it shall have originated, who shall enter the objections, at large, upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each House respectively; if any bill shall not be returned to the Governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not be a law.

Sec. 17. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both Houses, according to the rules and limitations prescribed in the case of a bill.

Sec. 18. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, until the time pointed out by this Constitution for the election of Governor shall arrive unless the General Assembly shall provide, by law, for the election of a Governor to fill such vacancy, or until the Governor absent or impeached shall return or be acquitted.

Sec. 19. If, during the vacancy of the office of Governor, the President of the Senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the House of Representatives shall in like manner administer the Government.

Sec. 20. The President of the Senate, and Speaker of the House of Representatives, during the time they respectively administer the Government, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office.

Sec. 21. The Governor shall always reside, during the sessions of the General Assembly, at the place where their sessions may be held, and at all other times, wherever, in their opinion, public good may require.

Sec. 22. No person shall hold the office of Governor, and any other office or commission, civil or military, either in this State, or under any State or the United States, or any other power at one and the same time.

Sec. 23. A State Treasurer and Comptroller of public accounts shall be elected by the qualified electors of the general elections for members of the State Legislature, who shall hold their offices for the term of two years.

Sec. 24. A Sheriff shall elected in each county, by the qualified voters thereof, who shall hold his office for the term of two years. unless sooner removed, shall be eligible for the next two years, but he shall not serve either as principal or deputy for the next term; and should a vacancy occur six months before the expiration of his term, the Governor shall issue a writ of election to fill such vacancy for the unexpired term by giving thirty days notice, and the Coroner shall discharge the duties of the office of Sheriff until the vacancy is filled.

MILITIA.

Sec. 1 The General Assembly shall provide, by law, for the organizing and disciplining the Militia of this State, in such manner as they shall deem expedient, not incompatible with the Constitution and Laws of the United States, in relation thereto.

Sec. 2. Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

Sec, 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

Sec. 4. All officers of the militia shall be elected, or appointed, in such manner as may be prescribed by law; provided, that the General Assembly shall not make any such elections or appointments, other than those of Adjutants-General and Quarter Masters General.

Sec. 5. The Governor shall appoint his Aides-de-Camp; Major-Generals, their Aides-de Camp, and all other division staff officers; and Colonels shall appoint their regimental staff officers.

Sec. 6. The General Assembly shall fix, by law, the method of dividing the mititia into divisions, brigades, regiments, battalions, and companies; and shall fix the number and rank of all staff officers.

On motion of Mr. Davis, 500 copies of the report were ordered to be printed.

Mr. Caldwell offersd the following resolution:

Resolved, That the Secretary of the Convention be authorized to employ an additional clerk, for the purpose of copying the journals of the Convention for the printer; to copy reports for the chairman of committees, &c., &c.

The rule requiring resolutions to lay on the table for one day, was suspended, and the resolution taken up.

Mr. Davis moved to amend the resolution, by giving to the Convention, the election of the additional clerk contemplated therein. Carried; and, on motion of Mr. Henderson, the resolution was ordered to lay on the table.

Mr. Hogg offered the following resolution:

Resolved, That the Hon. Charles S. Taylor is entitled to the same *per diem* and mileage pay, going and returning, as other members of the Convention, until the decision was made, between the Hon. Wm. B. Ochiltree and himself, for the seat as one of the deputies from the county of Nacogdoches.

On motion of Mr. Hogg, the rule requiring the resolution to lay on the table one day for consideration, was suspended, and the resolution adopted.

Mr. Mayfield offered the following resolution:

Resolved, That the committee on Education be instructed to enquire into the expediency of setting apart, a given portion of the annual revenue of the State, forever, for the support and maintenance of common schools, and for educational purposes; and that they report the result of their deliberations to the Convention.

Laid on the table for one day.

On motion of Mr. Parker, Mr. Ochiltree was placed on the same committee to which Mr. Taylor had been appointed.

On motion of Mr. Cuney, Mr. Jones was placed on the committee on the Legislative Department.

On motion of Mr. Baylor, Mr. Ochiltree was added to the committee on the Judiciary.

Mr. Parker introduced the following resolution:

Resolved, That the Committee on the Judiciary be, and are hereby instructed to take into consideration, the propriety of incorporating a provision in our State Constitution, (now about to be formed,) securing to the State of Texas, the right of adjudicating the land titles of the same, not subject to an appeal to the Supreme Court of the United States, and report, to this Convention, the result of their deliberations.

Mr. Parker moved a suspension of the rule. Lost.

Mr. Hogg offered the following resolution:

Resolved, That whereas, it has been decided by this Convention, that the Hon. Wm. B. Ochiltree is entitled to a seat in this body, as one of the deputies from the county of Nacogdoches; therefore, be it

Resolved, That the said Wm. B. Ochiltree is authorized, and requested, to sign the ordinance adopted by this Convention on the 4th instant, and signed by all the other members then present.

Laid on the table one day, for consideration.

On motion of Mr. Hemphill, Mr. Howard was added to the Committee on the Judiciary.

On motion of Mr. Evans, Mr. Wood was added to the Committee on the Legislative Department.

The President announced a communication from the Hon. Charles A. Wickliffe, which was ordered to be read, as follows:

"Sir:—I have this moment received your favor, enclosing to me, a copy of the resolution of the Convention of Texas, now in session, tendering to me, as one of President Tyler's Cabinet, the expression of the approbation of the Convention, therein, of the course pursued by me, upon the subject of annexation.

"The question of the annexation of Texas to the United States was, by me, and I may be permitted to say, by those with whom it was my good fortune to be associated, well considered both in reference to Texas and the United States. The interest of both nations demanded the union; and the union will protect and perpetuate the interest of both. It was a question which involved the cause of free government in this hemisphere. How could I, the advocate of free institutions, and of the right of the people to govern themselves, better serve that cause in my recent official station, than to advocate the annexation of Texas to the Union, upon terms honorable to both nations; and thereby extend over her citizens, the protecting and conservative principles of our Federal Constitution, which their fathers aided to establish?

"I viewed the question as one purely American, with which the powers of Europe had no right to meddle; and I am proud to believe it has been so considered by the people of Texas. I congratulate you, sir, and the people of the two countries, on the consummation of this great question; and render to the Convention, my thanks for the favorable expression of their opinion of my official conduct,

"The destiny of Texas, as a member of our confederacy, is in the hands of the Convention now assembled, to form, for the people, a Constitution,

"I will not permit myself to doubt, that the representatives of the people, whose bravery and love of liberty have achieved so much for themselves, will fail to provide for their country, an organic law which will secure to them, and their posterity, the blessings of civil and religious liberty.

"For the kind manner in which you have been pleased to communicate the resolution of the Convention, and the sentiments personal to myself, I pray you to accept my profound acknowledgment.

"I am, with great respect,
"Your fellow citizen,
C. A. WICKLIFFE."

ORDERS OF THE DAY.

The resolution offered by Mr. Mayfield, on yesterday, to authorize the appointment of a committee for certain purposes therein named, was taken up.

Mr. Henderson moved to lay the resolution on the table.

On motion of Mr. Forbes, a call of the Convention was ordered.

On motion of Mr. Armstrong, of J., the call was suspended.

The ayes and noes being called, on the motion to lay the resolution on the table, stood as follows:

Ayes—Messrs. Brashear, Brown, Clark, Cuney, Forbes, Henderson, Hicks, Hogg, Holland, Irion, Latimer, of R R., Lewis, Lipscomb, McGowan, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Ochiltree, Van Zandt, Wood and Young—26

Noes—Messrs. President Rusk, Anderson, Armstrong, of J., Armstrong of R., Baylor, Bache, Caldwell, Cazneau, Cunningham, Darnell, Evans, Everts, Gage, Hemphill, Horton, Howard, Hunter, Jewett, Jones, Kinney, Latimer of L., Love, Lumpkin, Mayfield, M'Neill, Standifer, Tarrant, White and Wright—29.

So the motion was lost.

The ayes and noes being called, on the adoption of the resolution, stood as follows:

Ayes—Messrs President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Caldwell, Cazneau, Cunningham, Evans, Everts, Gage, Hemphill, Horton, Howard, Hunter, Jewett, Jones, Kinney, Latimer of L., Love, Mayfield, M'Neill, Moore, Navarro, Standifer, Tarrant, White and Wright—30

Noes—Messrs Brown, Clark, Cuney, Darnell, Forbes, Henderson, Hicks, Hogg, Holland, Irion, Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Miller, Parker, Power, Rains, Scott, Smyth, Ochiltree, Van Zandt, Wood and Young—25.

So the resolution was adopted.

Mr. Evans, from the Committee on Privileges and Elections, to which was referred the memorial of John G Chambers, praying for a seat in this Convention, as a delegate from the county of Bowie, made the following report, counter to the majority of said committee,

Committee Room, June 10, 1845.

To the Hon. T. J. Rusk,

President of the Convention:

The undersigned, one of the Committee on Privileges and Elections, to which was referred the memorial of John G. Chambers, of Bowie county, praying for a seat in the Convention, as a delegate from said county, dissenting from the positions assumed by a majority of said committee, in the report of their chairman, begs to make the following counter report:

That as early as the year 184–, by an act of Congress, a portion of the territory of the county of Bowie was detached and added to a portion of the territory of Red River county, lying south of the Sulphur Fork of Red River, and erected into the judicial county of Paschal; and the citizens of the said judicial county were required to vote with Red River county. Subsequently, a decision of the Supreme Court of the Republic of Texas, declared counties established merely for judicial purposes, unconstitutional. By an act of Congress of 184–, the territory comprising the county of Paschal reverted, respectively, to the counties of Red River and Bowie. At the session of 1842–'43, by an act entitled, "an act to provide for the holding of the district court in two places in Red River," the territory formerly comprising the county of Paschal was made, in all respects, subject to the jurisdiction of the county of Red River; this act of the Congress was declared unconstitutional, by a decision of the Supreme Court. This decision left the citizens of this unfortunate territory, whose rights had been the subject of so many legislative enactments and judicial dicta, in doubt whether the decision of the Supreme Court extended so far, as to declare unconstitutional the whole act creating the southern division of Red River, or only so much of it as allowed the holding of the district court in two places in said county; and so far did this uncertainty obtain, that at the holding of the last annual election, at several of the precincts, no poll was opened. An election was, however, held, at a number of the precincts within the disputed territory, which polled 165 votes—which, added to 189 votes polled in the remainder of Bowie county, would make 354 votes, and clearly entitle said county of Bowie to two delegates, without disturbing the right of Red River county to three delegates. The last annual Congress, by an act, reestablished the original lines of boundary between the counties of Bowie and Red River. At the election for Sheriff, in the month of February last, the county of Bowie polled 435 votes; and the votes of two boxes were not counted, which would have increased the number to near 500.

This district of country comprises, within its limits, over 30 miles square, containing over 300 voters; which fact was overlooked by the President, when he issued his proclamation, recommending the call of a Convention, and apportioning the delegation to the same.

The undersigned is unable to discover the delegation of any right, to any department of the government, to disfranchise a large and respectable portion of the people; much less can he sanction such a procedure, when it emanates from a high stretch of unauthorized power, and is even then the result of error or mistake.

The undersigned would, therefore, recommend the passage of the following resolutions.

L. D. EVANS.

Resolved, That the territory comprised within the present limits of the county of Bowie voted, at the last annual elections, over 300 votes, and is entitled to two deputies in the Convention.

Be it further resolved, That John G. Chambers, having received the second highest number of votes polled in said county, for deputies, is entitled to a seat in this Convention.

Which report and resolutions, together with the report of the majority of the committee, were taken up.

Mr. Parker moved to refer them to the Committee on the Judiciary. Lost.

On motion of Mr. Van Zandt, the House went into committee of the whole—Mr. Baylor in the chair. After a short time spent therein, the committee rose, reported progress, and asked to be discharged from further consideration of the subject. Adopted.

The question being the adoption of the counter report,

On motion of Mr. Forbes, a call of the House was ordered.

On motion of Mr. Van Zandt, the call was suspended.

Mr. Gage offered the following amendment to the resolution offered by Mr. Evans.

Be it further resolved, That the county of Rusk be allowed two deputies in this Convention—one in addition to the one now occupying a seat in this body. Rejected.

The Ayes and noes being called on the adoption of the report and resolutions of Mr. Evans, stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Brown, Cazneau, Clark, Evans, Everts, Hemphill, Holland, Jewett, Latimer of L., Latimer of R., R., Mayfield, Standifer, Tarrant, Van Zandt, Wright and Young—18.

Noes—Messrs. President, Armstrong of J., Baylor, Bache, Brashear, Caldwell, Cuney, Darnell, Forbes, Gage, Henderson, Hogg, Horton, Howard, Hunter, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, McGowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Smyth, Ochiltree, White and Wood—33.

So the report and resolutions were rejected.

On motion of Mr. Mayfield, the report of the majority of the committee was laid on the table.

On motion of Mr. Kinney, the Convention adjourned until to-morrow morning, 9 o'clock.

Saturday, July 12th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The President announced the select committee contemplated by the resolution of Mr. May field, of Thursday last, enquiring into the expedency of ceding to the United States certain lands on the western and south western frontier, for military purposes, &c. Committee consisted of Messrs. Mayfield, Love, Runnels, Hemphill, Cazneau, Tarrant and Anderson.

The committee on Privileges and Elections made the following report:

Committee Room, July 9, 1845.

To the Honorable
the President of the Convention:

Your committee to whom was referred the petition of Horace Burnham, praying that he may be admitted to a seat in this Convention, as a delegate from the settlements adjacent to the three forks of the Trinity, have had the same under consideration and ask leave to make the following report: From the evidence before the committee, they have ascertained that the constituents of the memorialist are resident citizens of the adjacent counties of Nacogloches and Robertson; that the said counties of Nacogloches and Robertson being already duly represented in the Convention, the prayer of the memorialist should not be granted.

Your committee therefore recommend the adoption of the following resolution:

Resolved by the Convention, That the counties of Nacogloches and Robertson being already duly represented in this body, the memorialist is not entitled to a seat as a delegate in this Convention.

J. B. MILLER, Chairman.

Report laid on the table, to come up among the orders of the day.

Mr. Hemphill, chairman of the committee on the Judiciary, made the following report:

Committee Room, Austin, July 11, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

The committee to whom was referred the Judiciary Department of the Government, respectfully report that they have had the same under consideration, and recommend the following provisions to be incorporated in the Constitution.

JOHN HEMPHILL,
Chairman of the Judiciary Committee.

Sec. 1. The Judicial power of this State shall be vested in one Supreme Court, in District Courts, and in such inferior Courts as the Legislature may, from time, ordain and establish, and such jurisdiction may be vested in corporation courts as may be deemed necessary and be directed by law.

Sec. 2. The Supreme Court shall consist of a Chief Justice and two associates, any two of whom shall form a quorum.

Sec 3 The Supreme Court shall have appellate jurisdiction only, which shall be co extensive with the limits of the State, and the Supreme Court and Judges thereof shall have power to issue Writs of Injunction, Mandamuses, Quo-Warrants, Habeas Corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control over the District Courts, and shall hold its sessions once every year, between the months of October and June, inclusive, at not more than three places in the State.

Sec. 4 The Supreme Court shall appoint its own clerks, who shall hold their offices for four years, and be subject to removal by the said Court for neglect of duty, misdemeanor in office, and such other causes as may be prescribed by law.

Sec. 5. The Governor shall nominate, and by and with the consent of two thirds of the Senate, shall appoint the Judges of the Supreme and District Courts.

Sec. 6 The Judges of the Supreme Court, first appointed under this Constitution, shall hold their offices for four years; and all vacancies which may occur during that period shall be filled for the remainder of the term. The Judges appointed immediately after the expiration of the said term, and to fill all subsequent vacancies, shall hold their offices for seven years.

Sec. 7. The Judges of the District Courts first appointed under this Constitution, shall hold their offices for three years, and all vacancies which may occur during that period, shall be filled for only the remainder of the term. The Judges of the District Courts, appointed immediately after the expiration of said term, and to fill all subsequent vacancies, shall hold their offices for six years.

Sec. 8. The State shall be divided into convenient Judicial Districts, (and each District shall not contain more than seven counties.) For each District there shall be appointed a Judge, who shall reside in the same, and hold the courts at one place in each county, and at least twice in each year, in such manner as may be prescribed by law.

Sec. 9. The Judges of the Supreme Court shall receive a salary not less than   dollars annually, and the Judges of the District Courts a salary not less than   dollars annually, and the salaries of the Judges shall not be diminished during their continuance in office.

Sec. 10 All Judges of the Supreme and District Courts shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas;" all prosecutions shall be carried on 'in the name and by the authority of the State of Texas, and conclude against the peace and dignity of the same.'

Sec. 11. The District Courts shall have original jurisdiction in all criminal cases, and in all civil cases when the matter in controversy amounts to one hundred dollars; and the said courts and judges thereof shall have power to issue all remedial and original writs that may be necessary to give them a general superintendence and control over inferior jurisdictions.

Sec. 12. The Governor shall nominate, and by and with the advice and consent of two-thirds of the Senate, appoint an Attorney General, who shall hold his office for   years, and a District Attorney for each District, who shall hold their offices for two years, and the duties, salaries and perquisites of the Attorney General and District Attorney shall be prescribed by law.

Sec. 13. There shall be appointed for each county a convenient number of Justices of the Peace, one Sheriff, one Coroner, and a sufficient number of Constables, who shall hold their offices for two years, to be elected by the qualified voters of the District or county, as the Legislature may direct; Justices of the Peace, Sheriff and Coroner shall be commissioned by the Governor.

Sec. 14. No Judge shall sit in a case where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or where he shall have been of counsel in the cause. When all or any o the Supreme Court shall be thus disqualified, the Court shall certify the same to the Governor of the State, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of the said case; when the Judges of the District Courts are thus disqualified, the parties may, by consent, appoint a proper person to try the said case: and the Judges of the said Courts may exchange Districts, or hold courts for each other, when they may deem it expedient, and shall do so when directed by law. The disqualifications of Judges of inferior tribunals shall be remedied as may hereafter be by law prescribed.

Sec. 15. Inferior tribunals shall be established in each county, for appointing guardians, granting letters testamentary and of administration, for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and the District Court shall have original and appellate jurisdiction and general control over the said inferior tribunals, and over executors, administrators, guardians and minors.

On motion, 500 copies of the report and articles were ordered to be printed.

Mr. Evans made the following counter report:—

To the Honorable
the President of the Convention:

The undersigned begs leave to state that he dissents in many respects from the majority of the committee on the Judiciary, and that he will be ready in due time to lay before the Convention his own views in relation thereto.

L. D. EVANS.

Mr. Jewett offered the following resolution:

Resolved, That the committee on the General Provisions of the Constitution be instructed to enquire into the expediency of suspending the colonization contracts made by the President of Texas, by guaranteeing to the colonists actually settled in conformity to the contracts, their rights to land, and authorising the contractors to institute suits against the State for the recovery of any indemnity to which they may be equitably entitled.

On motion of Mr. Jewett, the rule requiring the resolution to lay on the table for one day, was suspended, and the resolution adopted.

Mr. Cuney offered the following resolution:

Resolved, That the House of Representatives of the first Legislature of the State of Texas, shall consist of sixty-one members, and that for every three Representatives there shall be one Senator, to be appointed in this ratio as nearly equal as may be among the several counties of the Republic.

Which resolution was read and laid on the table one day for consideration.

On motion of Mr. Lipscomb, Mr. Forbes was added to the committee on Printing.

The resolution of yesterday, for the appointment of an additional Clerk to the Convention, was taken up and adopted. Mr. Ochiltree nominated H. P. Bee. Mr. Caldwell, Alfred Luckett; and Mr. Mayfield, Joseph Waples. Mr. H. P. Bee having received upon a second balloting, a majority of all the votes, was declared duly elected.

Mr. Ochiltree moved that the Convention proceed to the election of a Reporter.

Mr Van Zandt moved that a committee of three be appointed to enquire into the propriety of electing a Reporter for this body. Carried.

The President appointed Messrs. Ochiltree, Cazneau and Van Zandt, said committee; who reported that it was expedient that the Convention go immediately into said election.

On motion of Mr. Ochiltree, the rule requiring resolutions to lay on the table one day for consideration, was suspended, and the ayes and noes being called for on the adoption of the report, stood as follows:

Ayes—Messrs President. Armstrong of J. Armstrong of P, Baylor, Brashear, Brown, Caldwell, Cazneau, Clark, Cuney, Darnell, Forbes Hemphill, Henderson. Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Latimer of L. Lewis, Love, Lumpkin, Mayfield, McGowan, Miller, Moore, Navarro, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Wright—38.

Noes—Messrs. Bache, Cunningham, Evans, Everts, Gage, Hunter, Latimer of R. R., Lusk, Lipscomb, M'Neill, Parker, Power, Rains, Scott, White, Wood and Young—17.

So the report was adopted. Whereupon the Convention proceeded to the election of a Reporter. Mr. Hemphill nominated Mr. Wm. F. Weeks; and there being no other nomination, and no objections being made, Mr. Weeks was declared duly elected Reporter for the Convention.

On motion of Mr. Cuney, the report of the committee on Privileges and Elections, upon the application of John G. Chambers, of Bowie county, was taken up.

Mr. Darnell moved to re-commit the report to the same committee.

Mr. Wright moved to amend so as to read "that he is not entitled to his seat under the rule of the House."

Mr. Latimer of L moved to refer the report to a select committee of five. Lost.

Mr. Latimer, of Lamar, said: I should like, Mr President in a few words to explain the reasons which induce me to vote against the adoption of the report: although I had intended simply to cast a silent vote, that the time of this House might not be consumed in useless and unnecessary discussion. I shall vote against it, sir, because I believe if that report is adopted, that more than three hundred freemen of the county of Bowie will be disfranchised: citizens who have as good a right to a representation upon this floor, as those of any other portion of the Republic. What are the circumstances of the case? Does not the President in his proclamation say that every county voting three hundred shall be entitled to two Delegates in this Convention? From the evidence here before you, is it not clearly and unequivocally manifest that Bowie county at the last Presidential election did vote upwards of three hundred votes? If such be the fact, there is but one matter for your consideration: is Mr. Chambers entitled to his seat here as a Delegate from Bowie county? Gentlemen may tell you that if the report is rejected, you will open the door to confusion, that you will establish a bad precedent. Precedents I care not for; I go for justice and if the claimants from any other county in the Republic can make out as plain a case, I will vote for them. If the people of Bowie county have rights, they should be asserted here: and surely those three hundred voters are as well entitled to two Delegates upon this floor, as the people of any county which is fully represented. There is no analogy between the claims of this and the other counties referred to. It was not proved that Sabine voted three hundred votes: with regard to Galveston it was only stated that the county could have polled six hundred votes, but for the pestilential disease under which it was suffering at the very time of the election, and which prevented numbers from turning out. Here we-have the evidence before us that the people did turn out, and that they voted over three hundred. As a matter of sheer justice, as well to Mr. Chambers as to Bowie county, I trust the Convention will grant him his seat.

Amendment adopted; and the report as amended adopted.

Mr. Tarrant offered the following preamble and resolution:

Whereas, the Chief Justice of Bowie county having issued writs of election, for the election of an additional Delegate from said county, and John G. Chambers having received the second highest number of votes polled in said election for Delegates, and having in compliance with the wishes of the voters of Bowie county, attended upon the Convention to obtain a seat as a deputy from said county, Therefore,

Be it Resolved, That the said John G. Chambers is entitled to receive and draw mileage at the same rate as the members of this Convention, to be drawn from the fund appropriated by the last Session of Congress to defray the expenses of this Convention.

Which resolution was read and laid on the table one day for consideration.

Mr. Mayfield's resolution of Friday requiring the committee on Education to enquire into the expediency of setting apart a portion of the annual revenue of the State for the support of common schools, &c., was taken up and adopted.

Mr. Parker's resolution of yesterday, requiring the committee on the Judiciary to take into consideration the propriety of incorporating a provision in our State Constitution, securing to the State the right of adjudicating the land titles of the same, &c., was taken up.

Mr. *Parker*, in support of the resolution, made the following remarks:

Before the question is taken, Mr. President, it would be proper perhaps to explain my object in introducing this resolution. I have not proposed it with the expectation that the provisions suggested will be incorporated into the Constitution in the very terms there set forth. But my object was simply to call the attention of the Judiciary committee to this point. The subject of the adjudication of land titles in Texas is one in which the people of this country feel as deep an interest as in any other whatever. It is well known to every gentleman upon this floor that there has been some opposition in some parts of the country to the annexation of Texas to the United States. Those spirits, Mr. Speaker, who have been opposed to that great measure are now sleeping. Public opinion has settled the question, and they now have nothing to say. But I venture to assert, Mr. President, that so soon as this Convention shall have finished their labors, and perfected the Constitution now under consideration, these individuals will be heard. Your Constitution, it is anticipated, is to be referred to the people for their adoption or rejection. Then the slumbering opponents of annexation will arouse themselves, and they will roar. They will pick up your Constitution and disfigure it; they will mark every dark spot upon it. And what subject has ever agitated the people of Texas like that of the adjudication of land titles? All the people are not lawyers; they do not understand the principles upon which their titles are predicated, upon which they are hereafter to be decided. The people, sir, or a portion of them at least, including many of the best of our citizens, many who have fought the battles of their country, are under the impression, that unless some provisions are incorporated in this Constitution, securing to them the right of having their land claims adjudicated here, when we go into the United States, the laws of Texas in relation to the subject will be disregarded; that their titles will be decided in accordance with precedents, with decisions long since made in the courts of that government. Is it not manifest, then, what a powerful club may be placed in the hands of those hostile to annexation, without some action upon the subject? It is then for the purpose of quieting the public mind, of showing the people the true position in which their land claims will stand in the event of annexation that I wish to call the attention of the Judiciary committee to this point, and to obtain from that committee a report explaining the principles which govern the subject, a report setting forth the facts as they are, which may tend to quiet the minds of our citizens, and take a powerful weapon out of the hands of the enemies of annexation, in order that we may have the same unanimity among the people, when the vote comes to be taken upon the adoption of the Constitution, as has been evinced on the part of our Congress, and in the counsels of this Convention. I wish to obtain a report from the Judiciary committee: it is the proper one, able and capable. That report I wish to see published and sent abroad among the citizens of the country, that they may be prepared to vote knowingly. I leave the resolution with the Convention; you may put it down, or refer it.

Mr. *Evans*, of Fannin, said: I rise Mr. President, for the purpose of offering an amendment. The danger to be apprehended, as I conceive, is not from the appellate, but from the original jurisdiction of the United States Superior courts. There are some able lawyers upon the Judiciary committee, who have practised in the United States courts, and are well acquainted with the subject. A large portion of our citizens, however, do not know the extent of the jurisdiction of those courts. It is therefore due, not only the gentleman who made the motion, but the community at large, that our citizens should be informed of the precise extent of the jurisdiction of the courts of the United States over their land claims. The resolution does not go far enough. I wish therefore to amend it in such a manner that the committee may report the precise jurisdiction of the United States courts over the whole question, and if it is competent to Texas to deprive the Supreme court of its jurisdiction.

Mr. *Parker* said he had reflected upon that point, but feared that the Judiciary committee had not within their reach the books necessary to make a full report upon the subject: though satisfied that they would make it as full as they should be able to do.

Mr. *Henderson* said: I am at all times, Mr. President, as much disposed as any one, to extend the proper courtesy to a fellow member: but at the same time, when acting upon a subject of this sort, I must satisfy myself that such extension of courtesy does not place me in an absurd position. What is the inquiry proposed to be made? It is proposed that this Convention assembled here in Texas shall inquire into the expediency of altering—what? The laws or constitution of Texas? No, sir: but those of the United States. That is the question now presented for the consideration of this body. I would ask gentlemen if we are not here for the purpose of framing a Constitution to be presented to the United States, such as will be acceptable to the people of Texas and of that country? And shall we for a moment inquire into the expediency of introducing a clause even limiting the jurisdiction of their courts? Is there any one who is not satisfied that we have not the power to do so? Is there any one who cannot perceive the bearing which even the inquiry proposed would have upon our interests when we come to present our Constitution before the Congress of the United States? I, sir, would be perhaps as much prejudiced against a certain species of claims, and as ready to give expression to my antipathy as any other gentleman upon this floor. But does this feeling warrant me, when called here to perform a solemn duty, to vote upon a momentous question, does this authorize me, sir, even supposing it in our power, to take away any power from one tribunal, and transfer it to another; tribunals that we have no control over; or even to suggest the expediency of instituting an inquiry upon the subject, an inquiry which, resulting in one way, would as certainly defeat the great measure of annexation, as that we are assembled in this house to-day? Where then the necessity of this action? I am willing to extend the rule as far as may seem consistent with common sense. But when a proposition is made so manifestly absurd, one which would present me and the Convention of which I am a member in such a light before the Congress of the United States, then I must say, as one man, that courtesy has its limits. Can the gentleman call upon me by any rule of courtesy, to give up my opinion upon a matter of this sort, an opinion so fixed, so determined, so unalterable, and enter upon an inquiry which I would be ashamed of? Can he ask me for a moment to support him in this proposition, when he must see that the very investigation would create prejudices in the minds of those who are already only too much disposed to oppose us in the United States? I have, for a similar reason, upon another occasion opposed an inquiry into a matter less objectionable than this. In what position would this action place us? It is at least but an investigation of the question, whether it is expedient for this Convention, composed of Delegates from all parts of Texas, to undertake an alteration of the Constitution of the U States, or to take away or limit the jurisdiction of the courts established in that country. I have come here but for one purpose; that of making a Constitution which will guard the rights of the people of Texas. I have come here to aid in making an instrument which I hope will be acceptable to the people of Texas, and to the government of the United States; and when a measure of this sort, so absurd in its very nature is proposed for my sanction, I feel myself bound to vote against it. It is not that I have any disposition to oppose fair inquiry upon all these matters; not that I would close the door upon evidence, or stifle investigation. But I am disposed to leave this subject with the powers which have the control over it, as they have the control of over other matters similarly situated, after we become a portion of the American Union. If they have it, the Republic of Texas does not wish any investigation of this kind. Had I questions involved that I wished to be settled upon principles that are pure, honest and just, and had I to choose my tribunal, I would choose that pure and unsullied one which gentlemen desire to deprive of jurisdiction in the case under consideration. Who that has a claim which he conceives just, or one that involves principles of difficulty, would for a moment hesitate to submit it to the courts of the United States? If we adopt the course contemplated by the resolution under consideration, it will prove to the world that we set up dishonest claims which we are unwilling to submit to the judgment of the U S. courts. Why undertake to limit the jurisdiction of the most enlightened tribunal which exists in America, if not in the world?

Will gentlemen insist for a moment upon an inquiry so palpably, totally and entirely absurd? Is it for the purpose of enlightening the minds of this Convention? Is it for the purpose of saying to the Congress and people of the United States, that they have not wisdom enough to know the rules which govern them, and what jurisdiction should be given to their courts? Or is it for some other purpose? Is it for the purpose of saying to that portion of the people of Texas who have evinced a feeling opposed to that of a large majority of their fellow citizens, that we are disposed to regard that feeling with peculiar complacency, limited and insignificant as it is compared with that of the great mass on the subject of annexation? If this inquiry is insisted upon, it will certainly beyond a doubt exert an injurious influence upon the feelings even of our friends in the U States, and will afford our enemies an opportunity of attacking us in a point which *one* has stated to be a very tender one to us. If this course is adopted, it will inevitably defeat the measure [illegible] annexation. What are the conditions of the resolutions which we have accepted? That we shall form a Constitution republican in its general form, which shall not conflict with the Constitution of the U. States. Is there one who can for a moment believe that we can take away any powers which we give to the Supreme Court of the United States, by accepting the proposed terms and going into the Union? Is there one who does not perceive that this course on our part would defeat the great measure? If there be any such, he may possibly vote for a resolution of this kind: for myself, I cannot. I see no good that can result from it: it seems to me unnecessary, unjust and unwise. I hope the Convention will not extend the rule; but on the contrary will say, that although under ordinary circumstances it is usual to extend it, yet in an instance of this kind, courtesy will not compel them to place themselves in this or any other unwise position.

Mr. *Baylor* proposed a substitute—instructing the committee on the Judiciary to take into consideration how far the title to lands owned by citizens of Texas will be affected by an adjudication of their rights in the Federal courts of the United States, and to report the result of their deliberations.

Mr. *Parker* said he presumed he had as great an anxiety to effect and consummate the great measure of annexation as his friend from San Augustine. He regretted extremely that a resolution introduced by himself for the purpose as he believed of enlightening the minds of the community upon a subject of importance, should have had the effect of harrowing up the feelings of that gentleman. He was as much indisposed as any one to incorporate anything into our Constitution palpably contrary to the form of government of the U. States. He trusted his object was fully and clearly understood by every gentleman upon this floor. And every gentleman upon this floor, he had no doubt, had seen in the public prints the instructions from a portion of the citizens of Houston county to him and his colleague (Mr. Lumpkin,) to oppose the annexation of Texas to the United States, on all occasions. He knew that a portion of the citizens of his county who are in the opposition, are thus opposed [illegible] the adjudication of their land titles will ultimately go to the Federal courts, the courts of the U. States, and there be decided [illegible] to the laws of Texas. Many of those citizens had no other objection to the annexation of Texas. As to the courtesy which the gentleman from San Augustine so positively withholds from him in this case he could say to that gentleman that he had not come here to ask courtesy, when the rights of the people demand prompt and honest action. The gentleman has tortured this subject into a construction which the resolution will not justify, either by its letter or spirit. He speaks of it as changing the Constitution of the United States. There is no such proposition in the resolution. It only requests your Judiciary committee to take under consideration the propriety of the measure set forth on its face. Sir, is this a proposition to run afoul of the Constitution of the United States? No, sir: far from it. But if the committee should take the view of the subject that he did, they would be able to make a report to this Convention that would harmonize nearly the whole people of Texas upon the great question of annexation; a question which he had sustained as a private citizen, as well as in the Senate of the Congress of the country a few weeks since, and also in this Convention only a few days past. His course has been too well known to be misunderstood. He was fully satisfied that if the Convention should adjourn without having manifested some disposition tending to quiet the minds of the people, a club, as he before remarked, would be furnished the enemies of annexation, which would be so used as to cause hundreds of the best citizens of this Republic to vote against the adoption of the Constitution. He would willingly vote for the substitute of the gentleman from Fayette: perhaps it was couched in better language: his object was to call forth from the Judiciary committee such a report as will satisfy the mass of the people upon what ground their land titles do and will stand.

Mr. *Baylor* said: Mr. President, I take it to be a desideratum at this period of the history of our country, that we should act upon the subject of annexation with as great a degree of harmony and unanimity as possible. So far there has been great unanimity of action upon the part of the President, the Congress and the people. In all probability the result of our deliberations here will be submitted to the people at large for their adoption or rejection; and I fervently hope, that when it shall take that course it will be adopted with the same unanimity of sentiment, and that there will be found scarce an individual throughout the wide extent of our country to vote against the adoption of the Constitution. If there shall be a division upon the question, if a respectable minority even shall vote against the Constitution, the circumstance may be, and in all probability will be seized upon by the enemies of annexation, and wielded against us in the United States. It will be said that a large portion of the people were opposed to annexation, and they will point for proof to the vote upon the ratification of the Constitution. I say then, that in order to secure harmony in the action of the people upon this question, I feel desirous, as far as my humble endeavors may go in this body, to quiet the public mind, and give repose and tranquility to the public feeling. Sir, I may truly say of this subject that it is one in which I have taken a deep and abiding interest. And I have marked with some degree of care and attention the popular feeling in relation to it; I have listened with an attentive ear to the various objections urged against the measure. I am well aware of the feeling which existed in

Robertson county, and perhaps in Milam, soon after the appearance of some unfortunate articles in the National Vindicator. I do not know the motive of these publications; perhaps they were designed for the promotion of the public good. At all events they had a tendency to excite the popular fears, and in fact they caused a good deal of alarm in the minds of some of the best citizens of Robertson county. And the result was, that when I went to perform my judicial duties in that part of my district, I found some of the best of the people opposed to annexation. They had been told that they would have to travel to Washington city, perhaps, to attend to their law suits; that their rights would not be adjudicated in accordance with their domestic laws, but alone by the Constitution and laws of the United States. And if such was to be the result, they would oppose annexation. For we all know that there is no subject in relation to which a more lively and exquisite sensibility is felt by the people of this country than that of their land titles. The matter was then fully explained by my learned friend from Washington, Judge Lipscomb, and others, and the public mind became tranquilized upon the subject. I learn from the gentleman from Houston that great anxiety in relation to it is manifested by the people in his section of the country. Where then the objection to placing the matter befor the Judiciary committee, with the qualification which I have proposed feeling the force of the objections urged against the original resolutio The language of that resolution is certainly at war with the Constitu tion of the United States, and I should dislike to see it with its peculi phraseology passed by this grave and deliberative body. But I am sa isfied that no harm can result from the reference of the subject to t Judiciary committee. Their report can be published: the people wi read it, and the probable result will be, a good degree of unanimity i the ratification of the Constitution. Sir, I remember that when the Con vention which framed the Constitution of the United States, was abou to close its labors, that great and good man, Dr. Franklin, rose in h place, and proposed to those who during the session had been battlin against many of its features, that it should appear upon the journals th the Constitution was unanimously adopted by the members of that body and, said that great man, whose mind was matured and mellowed b long experience, whatever objections we may have had to many featur of this instrument, however earnestly we may have contended again many of its provisions, let not a dissenting word be whispered beyo these walls, in order that the people may adopt it with the same harmo ny and unanimity. With this feeling, and a disposition to enlighten th public judgment, I shall vote for the resolution. It is simply a resol tion of inquiry, and no more.

Mr. *Caldwell* said it appeared to him that the substitute did not the views of the gentleman who proposed the first resolution. I seemed to embrace a more confined view of the subject, than that g tleman desired. He said he had drawn up one which he would offer to the House, and which he thought would meet the views of the gentleman from Houston.

The substitute which he read was a resolution instructing the committee on the Judiciary to inquire into the extent of the jurisdiction of the Federal courts, &c.

Mr. *Hemphill* said the last resolution offered would extend to all questions which could arise in this country. The former had only for its object the jurisdiction of the courts of the United States in the adjudication of titles to lands. A question might arise under the first resolution—and that is, whether when a suit shall be decided in our highest State tribunals, an appeal should be allowed to the U. States courts? He thought it inadvisable to express any opinion on that particular question. In the U. States several of the State tribunals have denied the existence of the right to appeal to the Supreme Court of the United States. The question of the jurisdiction of the U. S. courts had been extensively investigated before the constituency he had the honor to represent. The subject was well understood by them. He would at present only say that the courts of the United States in taking cognizance (in proper cases) of our titles to lands, would be regulated in their decisions by no other rules than those known to and recognized in the laws of Texas.

Mr. *Lipscomb* said he was not satisfied with any resolution that had been offered upon this subject, nor was he prepared at this time to offer one that would satisfy himself. Yet he believed that something might be profitably done by an investigation before the Judiciary committee. He believed that the people of some counties had been acted upon as far as they could be by means of false alarms. He had seen it roundly stated in the papers that every question of land titles would go as a matter of course to the Supreme Court of the United States. What lawyer would believe that? Yet the statement was well calculated to alarm persons unacquainted with these matters, on account of the great expense which would be attendant upon suits taken from our own tribunals to that. It would be believed; it would have its effect; it would determine the position of many in regard to annexation, as if it were founded in fact.

He would propose to lay the subject on the table until a suitable proposition could be brought before the Convention. He was as much opposed as any other gentleman to doing anything which would place us in a ridiculous attitude by an inquiry into the propriety of amending the Constitution of the U. States. But still he would have this body do what they could to satisfy the public mind; and if a report could be had which would accomplish that object, and the members of this Convention should neglect to furnish it, he thought they would fail in their duty to the people of Texas.

He moved that the resolution lay on the table.

Mr. *Henderson* had a great objection even to instituting an inquiry. The question of the propriety of limiting the jurisdiction of the United States Supreme Court was one that he could not contemplate with any sort of calmness. But he was perfectly willing that a course should be taken to bring out an expression of opinion upon the subject by means of a report. He thought the people of Texas could be satisfied that no evil was to be apprehended.

Mr. *Love* moved that the resolution be referred to a select committee: it would save time.

Mr. *Jewett* said: Mr. President, If the committee are instructed to report at a definite time, I will sustain the motion of the gentleman; otherwise I shall be bound to oppose it. For my own part, I can see no danger to be apprehended from an expression of opinion upon questions of so great importance. Annexation is an anomaly in political history. If we had been a territory, during the present debate the people would be familiar with the jurisdiction of the United States' Courts. But we have now been nine years [illegible] time we have drawn no inconsiderable portion of our population from beyond the Atlantic. You know, Mr. President, for you have seen them in battle, that some of the best of our citizens [illegible] not emigrate from the United States; and they are actually strangers to the jurisdiction of the United States' Courts. It is due that the [illegible], if a minority, to spread before them all the necessary lights upon the subject, that when they come to vote, they may vote understandingly. This portion of our citizens [illegible] many of the best, bravest, and worthiest among us; and it is certainly due them that they should be enabled to vote intelligently upon this great question soon to be submitted. I can confirm the statement of the gentleman from Fayette with regard to the extreme sensibility and solicitude felt upon this subject in the county which I represent. There is an area of seven thousand square miles in which may arise a rich harvest of litigation, unless the desired action shall be taken by this Convention. There is a large proportion of lawyers in this body: a class always regarded with suspicion by the people; and it is due the profession, as well as the people at large, that they should be enabled to understand the question in all its bearings.

Mr. *Love* said that the best protection which those [illegible] opinion, was the limitation law of the United States. The [illegible] Court of the United States had decided that seven years [illegible] bar to an action. We have had five years limitation during the [illegible] ence of the Republic; and there is no question but the Supreme Court will decide that five years is sufficient. You will find at last the sole check upon land litigation, which is so destructive of the best interests of a country, in the law of limitation. He believed there was not one here who was not in favor of a short limitation to secure the property of the settler. He was opposed to any measure calculated to disturb the occupant in his possession, and equally fearful of doing any thing which might have the appearance of dictation, or a declaration of what should be our construction of the Constitution of the United States, or the jurisdiction of the courts of that country. That is fixed, and will remain unalterable: and the only possible effect of such a course of action upon us, would be the rejection of our Constitution. He thought it would be best to refer the subject to a select committee, who might present their views upon it as speedily as possible.

Mr. *Henderson* said, that he was willing to express to the world his opinions upon this subject. And the people are not as ignorant upon it as they might be accounted. If necessary however to enter into this legal investigation, that could be done without incorporating any thing of the kind into the Constitution, and he was willing that course should be taken. He was willing to state to the people what this Convention believes to be the jurisdiction of the courts of the United States: to give an expression of opinion for the purpose of meeting the statements published in the newspapers; for the purpose of contradicting the impressions which these false publications have produced upon the minds of the people of Texas. Such statements have been made, and as he presumed, by persons who knew at the time they were misrepresenting the facts. With that view alone, he was willing to sustain the motion of the gentleman from Washington.

Mr. *Mayfield* said he could not see any danger in any of the resolutions. The fact was well known that a great degree of feeling has been excited and the sensibilities of the community have been very much roused upon the very subject brought before the Convention by the several resolutions now offered. For himself, he was willing to vote for any and all of them. The inquiry could only tend to enlighten the public mind upon a subject of interest. He was satisfied no gentleman could for a moment believe that the result of a reference to the Judiciary Committee would be a recommendation to the Convention to limit or restrict in any degree the jurisdiction of the Supreme Court of the United States. Such a course would only terminate in the defeat of annexation. It was well known that when we become a State, and we are a State *de jure* now, if not *de facto*, we can incorporate nothing into our Constitution inconsistent with the Constitution of the United States. He would vote for any or all of the resolutions.

Question put on the reference to a select committee. Carried.

Mr. Forbes moved a reconsideration of the vote, on the reference to a select committee. Reconsidered.

Mr. *Lewis* said he preferred a reference to the Judiciary Committee. It was that committee alone that could give dignity and character to the result of their deliberations in a matter of this kind; it was the only one in which the people could have confidence. Although he believed there were many persons in the country opposed to annexation in consequence of the impression alluded to by gentlemen, yet he thought they were greatly mistaken in those ideas; and that a suitable report from the Judiciary Committee would reassure them, and aid in producing the unanimity so desirable. He thought therefore that if it should have no other effect than to present the question in its true aspect and all its bearings before the people, such a report should be had; and no doubt it would change the views of many of those now opposed to annexation.

Mr. *Ochiltree* said: I have refrained thus far, Mr. President, from saying any thing upon the subject before the Convention; but inasmuch as the vote referring it to a select committee has been reconsidered, I feel constrained to offer a few remarks by way of showing why I have opposed, and shall continue to oppose the reference of such resolutions to any committee whatever. To whom the good, and what the good to be anticipated from such a course? It will be within your recollection, Mr. President, as within that of every member of this Convention, that when the announcement was made from a high place, that there were *contingencies* attendant upon annexation, the people indignantly answered that they were willing to take annexation with all its contingencies. They have matured then well in their minds; and no report that could possibly be produced by the ingenuity of the Judiciary Committee, would, at this day, change one solitary vote for or against the measure. I will not believe that any citizen has made up his mind upon this great and important question without having fully considered all the interests connected with it. The people have determined, from one end of the land to the other, to go into the American Union, and to abide all the consequences of their choice. They ask no exclusive privileges; they would not willingly accept any privileges granted to them, and denied to every other member of the Confederacy. Is there a single individual in Texas, who has rights to be adjudicated, and is not willing that they should be decided by the same laws and governed by the same principles as those which prevail in our sister States? I trust not; I believe not.—I believe that the minds of the people are so fully made up, that no report which could be published would change the opinion of a single individual. I believe the people have determined to accomplish the great measure of annexation at every risk, regardless of consequences. They are willing to trust much to the United States: confidently believing that no undesirable laws will be forced upon them, which the Constitution of the United States does not absolutely require. I shall oppose every thing like a reference of this subject. The citizens of my county, at one of the largest meetings ever convened in the Republic, have declared their willingness to take annexation with all its contingencies. The course proposed will only stir up a subject, powerful to do mischief, without the prospect of any advantage to be received from its agitation.

Mr. *Moore* said: Mr. President: when the resolution was first submitted by my friend from Houston county, I was opposed to its adoption; because I thought it calculated to have an injurious effect among the people, and to bring discredit upon the Convention. It contained, as I thought, an imputation that we were what we have been represented as being, a republic of refugees from justice. But as amended by the gentleman from Fayette, all my objections are removed. We are told by the gentleman from Nacogdoches who has just taken his seat, that the people have determined to take annexation with its contingencies. I have looked around the country with care, I have heard reports from every section; and I find mingling with the rejoicings of the people the deep mutterings of discontent. That gentleman, I know, has heard them; and I fear, Mr. President, unless a full and fair inquiry shall be made, as suggested by the gentleman from Houston, that these mutterings will increase, and that when our Constitution shall have been adopted, it may be opposed in the American Senate on the ground that the publications and journals of the country show a large and respectable portion of the citizens of Texas yet opposed to annexation. I wish that when our Constitution shall be adopted, it may be with the same unanimity which has been displayed by this Convention in adopting the ordinance. I know that my friend from Houston is a warm, ardent and sincere friend of annexation. I have noted his course, not only here, but upon the floor of Congress. I know there is none more sincere; and that in submitting this resolution he was actuated by the purest motives; by a sincere wish to delay the discontent, the dissatisfaction and opposition which he has seen gathering round him in his own and the adjoining counties; which I have seen in my own county, and which has been displayed upon this floor by one of the delegates from the county of Galveston. I hope however that all these feelings will be allayed, and that the people without a dissenting voice will adopt the Constitution. I hope the proposed inquiry will be instituted. I have been silent during the discussion, because I was aware that it [illegible] at this stage of the proceedings, quietly and calmly to [illegible] to some committee. I have no fear of any injury arising from such a reference; having full confidence in the Judiciary Committee appointed by the President, I shall cheerfully abide their decision upon the subject.

Mr. *Young* said that if he understood the object of the resolutions, it was that the committee should make a report, in order to obtain an expression of the sense of this Convention with regard to the various bearings of annexation to the United States, so far as the application of their laws to Texas and the jurisdiction of their courts are concerned. It seemed to him then that the resolution offered by the gentleman from Fayette covered the whole ground. This was a subject which created a great deal of confusion in his part of the country. It was highly desirable that some course should be taken calculated to quiet the fears of those people. He preferred the resolution offered by the gentleman from Fayette.

Mr. Ochiltree moved to lay the whole subject upon the table.

Mr. *Mayfield*, with leave of the Convention, spoke as follows:

I think, Mr. President, that the question is entirely misunderstood, or misapprehended by most of the persons whom we have heard discuss the merits of the several resolutions offered. It seems to be considered by some, that the inquiry proposed by the gentleman from Houston is unnecessary and absurd in itself. But we are told by that gentleman that the sentiments and feelings of many of his constituents are such upon this subject, that if their land claims are to be adjudicated in the courts of the United States, they would rather give them up at once than to incur the expense of prosecuting them at so great a distance from their homes. Now if such is the state of the public feeling, it is because the people do not understand what absolutely is the extent of the jurisdiction of the courts of the United States, and the ultimate effect upon the rights and property of the citizens of Texas in the event of annexation. It has been suggested that the action proposed may jeopardize and retard annexation. But if the public mind is in the situation represented, is it not proper that it should be informed of the true state of this question? And if the point submitted shall be referred to the Judiciary Committee, and the result of their deliberations reported to this House in language plain, simple and honest, will it not furnish the strongest argument to the citizen to be satisfied with such terms as may be fixed in the Constitution, explaining to them the new relations existing between themselves and the courts of the United States in the event of annexation? Let the committee investigate all the points upon which the public mind is not entirely satisfied, and fully explain the relative situation in which we shall be placed, and I venture to assert it will be the strongest appeal which we can make to every citizen of the republic to ratify the Constitution which may be submitted by this body. There can be no danger in this course; an inquiry of this kind should excite no alarm. However plain these matters may appear to members of the Convention, it will be recollected that a large number of the deputies here assembled are gentlemen esteemed learned in the law, and of course conversant with the principles which will govern us after our reunion with the mother country: but the great massof the people are not so informed; they are unacquainted with the new political relations which will immediately arise between us and the Confederacy of which we shall form a member. So long as there is any gentleman desirous that his constituents shall be informed upon the subject, I say let it be done if it can be done through the action of the proper committee. And for myself I can see no danger of jeopardizing annexation. Those who will look at the history of the last few months, will recollect that the party unfavorable to annexation, and if there were any such political party in existence at all, it was this which endeavered to operate upon the public mind by measures partly secret in their character, made a skilful use of these very points which it is now proposed to explain. Yes, sir: if I have been correctly informed, political combinations have been attempted to be made for the purpose of exciting the people upon this very subject, scaring and alarming them with the assertion that their rights would have to be brought before the United States' Courts for adjudication. Shall we then hesitate to institute an inquiry upon these subjects, when an organization of this kind, as we have reason to believe, has been attempted for the purpose of alarming the people in relation to the adjudication of their rights? But even that scheme failed: all schemes devised to prevent or retard annexation have failed. Let the people then be truly and fully informed upon these matters, and I venture to say that there will be no danger with regard to the ratification of annexation; and the inquiries will not cause us to incorporate any thing into our Constitution incompatible with the Constitution and institutions of the United States, or which will prevent its ratification on the part of the government and the people of that country.

Mr. President *Rusk* addressed the Convention as follows—Mr. Forbes in the chair:

I will give my reasons in a few words for voting against the motion to lay the subject on the table. The subject of land titles in Texas has been and will for a number of years continue to be a very exciting one. We have this matter now before us; if it is laid upon the table, it will come up again, and we shall again have the same excitement. I shall vote therefore against the motion, with the hope that the subject may be referred to the appropriate committee. If the committee propose a resolution similar to that offered by the gentleman from Houston, I shall vote against it, whatever form it may take. We have accepted the proposition of the United States in relation to annexation, and therefore are now a State in Convention assembled, for the purpose of framing as State Constitution, and not for the purpose of altering the Constitution of the United States. A course of this kind would be a reflection upon the Constitution of the United States. This is a direct proposition, so far as it goes, to alter the Constitution, and in connexion with a subject, that of land claims, which will inevitably produce confusion whenever it is brought up. The proposition of the gentleman from Fayette, however, is such as I can vote for. It simply requires the Committee on the Judiciary to inquire how far, after we become a State, and we are that now in my opinion, the laws of the United States will operate upon our land titles. I am anxious to see the subject investigated, and reported upon. It is due ourselves, the country and the opposition, There has been opposition. and of a serious character, to the annexation of this country to the United States. It has presented itself in various forms; and means have been employed, intended to be potent in their operation, to defeat the known and expressed will of the people. That opposition is not dead; and if this Convention give it a capital, it may still continue to operate to the defeat of a measure in which the feelings of the people of Texas and the United States, and the lovers of constitutional liberty throughout the world, are deeply enlisted. Men have been alarmed by every possible means; their fears and their interests have been appealed to; the laws of the United States have been misrepresented and misquoted, and a tribunal has been assailed and traduced, which stands higher than any other in the world. It has been stated that all your land titles would go there to be adjudicated; that the United States' Courts would establish every old fraudulent claim. These things have been said; and they may be said again; and the fears of the people may be strongly appealed to. I have said before the people, that the United States will not get jurisdiction in these cases; such has been the decision of the Supreme Court itself, and this the objectors knew at the time. The questions now exciting the people in relation to their titles to lands cannot be brought before the Courts of the United States. This is the law, and this the Judiciary Committee can say. They can go further: and quote the decision of the Supreme Court upon questions of limitation; they can show that the laws of Texas will be the invariable rule of that Court. That court has sanctioned a limitation of seven years, one of twenty years, one of five years, and one almost in the very words of our Statute, of three years. The English Courts have ever looked with suspicion upon laws of limitation; the United States' Courts, on the contrary, set out with the principle [illegible] not with suspicion; that they are statutes of repose, made for the purpose of compelling those who have claims against the unfortunate, to enforce them within a reasonable time. I shall vote, then, in favor of [illegible] the substitute, and then for its reference to the Committee on the Judiciary. There can be no harm in the inquiry. I believe the annexation of this country to the United States, to be of the utmost importance; a measure in which the interests of the present population of Texas, and future generations are deeply involved. And I believe that when this subject comes to be examined in all its bearings, so far from inducing oppostion, it will confirm those now in favor of the measure, and augment their number.

Mr. *Ochiltree* said he was still of the same opinion, but as he did not wish to stifle investigation, he would withdraw his motion.

On motion of Mr. *Moore*, the substitute offered by Mr. Baylor was adopted.

Mr. Darnell offered the following resolution:

Resolved, That the Committee on General Provisions be instructed to enquire into the expediency of providing by law, at the earliest day practicable, that all or one-half the property belonging to the wife by deed, gift, bequest or inheritance at the time of her marriage, shall remain the property of the wife, as also one-half of the property of the husband at the time of marriage shall vest, as also one-half of all property that shall be acquired after marriage, after the payment of all just debts shall likewise vest in the wife; also the proceeds of the property belonging to the wife shall be at her own disposal.

Which resolution was read and laid on the table one day for consideration.

Mr. Miller offered the following resolution:

Resolved, That the President of this Convention be and is hereby authorized and requested to make a requisition upon the Secretary of the Treasury for *six thousand dollars*, to be used for the *per diem* pay and mileage of the members, and the contingent expenses of the Convention.

On motion of Mr. Young, the rule was suspended requiring the resolution to lay on the table one day, and the resolution was taken up and adopted by the Convention.

On motion of Mr. Van Zandt, the Convention adjourned until Monday morning, 9 o'clock.

Monday, July 14th, 1845.
9 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The resolution of Mr. Hogg, of Friday last, authorizing the Hon. Wm. B. Ochiltree (one of the delegates from Nacogdoches county,) to sign the ordinances adopted by this body of July 4th, was taken up and adopted.

The resolution of Mr. Cuney, providing that the first House of Representatives of the State of Texas shall consist of sixty members, and that for every three Representatives there shall be one Senator, was taken up, and on motion of Mr. Scott, the resolution was laid on the table.

The resolution of Mr. Darnell, requiring the committee on General Provisions to enquire into the expediency of providing by law that property belonging to the wife shall remain her separate property, &c., was taken up. On motion of Mr. Young, the last clause in the resolution, providing that "the control of the property belonging to the wife shall be at her own disposal," was stricken out, and the resolution adopted.

Mr. Cunningham offered the following resolution:

Resolved, That the Judiciary committee be instructed to enquire into the expediency of inserting in the Constitution a clause providing for the appointment of an officer in each Judicial District, whose duty it shall be to enquire into, and cause to be brought before the District Court, all cases in their respective Districts, of land titles forfeited under the laws of Coahuila and Texas, as well as all lands escheated under any of the laws heretofore existing within the territory of Texas; also to enquire into the expediency of setting aside the monies arising from the sale of such lands for the purposes of education, and report thereon as soon as practicable.

Which was read, and laid on the table one day for consideration.

On motion of Mr. Horton, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Mr. Runnels, chairman of the committee on the Legislative Department, made the following report:

Committee Room, Austin,
July 11th, 1845.

Mr. President:

The committee on the Legislative Department of the Government have had under consideration the subject referred to them, and have instructed me to make the following report:

Sec. 1. Every free white male person who shall be a citizen of the United States, or who is, at the time of the adoption of this Constitution, a citizen of the now Republic of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the county, city, or town, in which he offers to vote (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified elector.

Sec. 2. Electors shall, in all cases, except a breach of the peace, treason or felony, be privileged from arrest during their attendance as electors, and in going to and returning from the same.

Sec 3. In apportioning representatives among the several counties, cities or towns, entitled to separate representation, regard shall be had to the qualified electors.

Sec. 4. The legislative powers of this State shall be vested in two distinct branches. the one to be styled the Senate and the other the House of Representatives, and both together the "General Assembly of the State of Texas," and the style of their laws shall be, "Be it enacted by the General Assembly of the State of Texas."

Sec. 5. The members of the House of Representatives shall be chosen by the qualified electors, and shall serve for the term of two years, from the day of the commencement of the general elections, and no longer.

Sec. 6. All elections by the people, shall be by ballot, until altered by law.

Sec. 7. No person shall be a Representative, unless he shall be a citizen of the United States. or, at the time of the adoption of this Constitution, a citizen of the now Republic of Texas, and shall have been an inhabitant of this State two years next preceding his election; and the last year thereof, a citizen of the county, city or town, for which he shall be chosen; and shall have attained to the age of twenty-five years at the time of his election.

Sec. 8. All elections by the people, shall be held at such time and place or places, in the several counties, cities or towns, as is now, or may hereafter be, designated by law.

Sec. 9 The whole number of Senators shall, at the several periods of making the enumeration, be fixed by the General Assembly; and apportioned among the several districts. to be established by law, according to the number of qualified electors; and shall never be less than one-fourth, nor more than one-third, of the whole number of Representatives.

Sec. 10. The Senators shall be chosen by the qualified electors, for the term of four years; and, on their being convened, in consequence of the first election, they shall be divided by lot, from their respective districts, into two classes, as nearly equal as can be. The seats of Senators of the first class shall be vacated at the expiration of the first two years, and of the second class at the expiration of four years; so that one-half thereof shall be chosen biennially, thereafter.

Sec 11. Such mode of classifying new additional Senators shall be observed, as will, as nearly as possible, preserve an equality of number in each class.

Sec. 12. When a Senatorial District shall be composed of two or more counties, it shall not be separated by any county belonging to another district.

Sec. 13. No person shall be a Senator, unless he shall be a citizen of the United States, or, at the time of the adoption of this Constitution a citizen of the now Republic of Texas, and shall have been an inhabitant of this State three years next preceding the election; and the last year thereof a resident of the district for which he shall be chosen: shall have attained to the age of thirty years, and shall have paid a state and county tax.

Sec. 14. The House of Representatives, when assembled, shall choose a Speaker and its officers: and the Senate shall choose a President, and its other officers. Each House shall judge of the qualifications, and elections, of its own members: but a contested election shall be determined in such manner as shall be directed by law: a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day; and compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Sec. 15. Each House may determine the rules of its own proceedings. punish members for disorderly behavior, and, with the consent of two-thirds, expel a member—but not a second time for the same cause.

Sec. 16. Each House shall keep a journal of its proceedings and publish the same—excepting such parts as, in its judgment may require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the journals.

Sec. 17. When vacancies happen in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election, to fill such vacancies.

Sec. 18. Senators and Representatives shall, in all cases except of treason, felony or breach of the peace, be privileged from arrest, during the session of the General Assembly; and in going to and returning from the same—allowing one day for every twenty miles such member may reside from the place at which the General Assembly is convened.

Sec. 19. Each House may punish, by imprisonment during the session, any person, not a member, for disrespectful or disorderly conduct, in its presence; or for obstructing any of its proceedings; provided such imprisonment shall not, at any one time, exceed forty-eight hours

Sec. 20. The doors of each House shall be kept open, except on such occasions as, in the opinion of the House, may require secrecy

Sec. 21. Neither House shall, without the consent of the other, adjourn for more than three days—nor to any other place than that in which they may be sitting, without the concurrence of both Houses.

Sec. 22. Bills may originate in either House, and be amended, altered or rejected, by the other; but no bill shall have the force of a law until, on three several days, it be read in each House, and free discussion be allowed thereon—unless, in case of great emergency, four-fifths of the House in which the bill shall be pending, may deem it expedient to dispense with this rule: and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

Sec. 23. All bills for raising revenue, shall originate in the House of Representatives; but the Senate may amend, or reject them, as other bills.

Sec. 24. Each member of the General Assembly shall receive, from the public treasury, a compensation for his services, which may be increased or diminished by law; but no increase of compensation shall take effect during the session at which such increase shall be made.

Sec. 25. No Senator or Representative shall, during the term for which he shall have been elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term; and no member of either House of the General Assembly shall, after the first session of the Legislature after his election, and during the remainder of the term for which he is elected, be eligible to any office or place, the appointment to which may be made in whole or in part by either branch of the General Assembly; nor shall the members thereof, be capable of voting for a member of their own body, for any office whatever, except it be in such cases as herein provided for.

Sec. 26. No Judge of any court of law, or equity, Secretary of State, Attorney General, Clerk of any court of record, Sheriff or Collector, or any person holding a lucrative office under the United States, (the office of post-master excepted,) or this State, shall be eligible to the General Assembly: provided that officers of the militia, to which there is attached no annual salary, or the office of justice of the peace, shall not be deemed lucrative.

Sec. 27. No person who, at any time, may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the General Assembly, or to any office of profit or trust under the State Government, until he shall have obtained a discharge for the amount of such collections, and for all public monies with which he may have been entrusted.

Sec. 28. Ministers of the Gospel being, by their profession, dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions: therefore, no Minister of the Gospel, or Priest, of any denomination whatever, shall be eligible to the General Assembly.

Sec. 29. Elections for Senators and Representatives shall be general, throughout the State; and shall be regulated by law,

Sec. 30. The General Assembly shall, at their first meeting, and in the year one thousand eight hundred and fifty, and in not less than every four, nor more than every eight years thereafter, cause an enumeration to be made of all the free white inhabitants, (Indians not taxed, Africans and descendants of Africans excepted) of the State, designating particularly the number of qualified electors, and the whole number of Representatives shall, at the several periods of making such enumeration, be fixed by the General Assembly and apportioned among the several counties, cities or towns, entitled to separate representation, according to the number of qualified electors in each; and shall not be less than forty, nor more than sixty-four, until the number of free white inhabitants (Indians not taxed, Africans and descendants of Africans, excepted) shall be one hundred thousand, and after that event, such ratio that the whole number of Representatives shall never be less than sixty, nor more than one hundred.

Sec. 31. The members of the General Assembly shall, at their first session after the adoption of this Constitution by the Congress of the United States, receive from the treasury of the State, as their compensation, three dollars per day for each day they shall be in attendance on, and three dollars for every twenty miles travelling to and from, the place of convening the General Assembly. The first general election for Senators and Representatives of the General Assembly shall be held on the first Monday and day following, in the month of November, one thousand eight hundred and forty-six, and shall be held biennially thereafter, on the first Monday and day following; in the month of November.

Sec. 32. The first session of the General Assembly, after the adoption of this Constitution by the Congress of the United States, shall be held at the City of Austin, the present Seat of Government, and thereafter, until the year one thousand eight hundred and fifty, and until the Legislature shall otherwise provide by law for a temporary or permanent Seat of Government. Elections for members of the first session of the General Assembly shall be held on the first Monday and day following of January next, and shall be governed in all respects by the laws of the existing government, regulating elections, and shall be convened by the President of the existing government, at the earliest day practicable after the adoption of this Constitution by the Congress of the United States.

All of which is respectfully submitted.

H. G. RUNNELS, Chairman.

On motion of Mr. Caldwell, 500 copies were ordered to be printed.

Mr. Lipscomb offered the following resolution:

Resolved, That a committee be appointed, to consist of seven members, to inquire and report to the Convention the amount of money which can be collected by a reasonable rate of taxation, and what amount will be sufficient to support the State Government for the first year.

Mr. *Lipscomb* said that he did not know whether a resolution of this kind was in conformity with the usual mode adopted in bodies like this. If we had a committee of Ways and Means, it would be proper perhaps for [illegible] committee to make the inquiry. But having no such committee, this appeared to be the only method of arriving at information, which [illegible] and perhaps by many other members was deemed of [illegible]. To act advisedly, it was necessary first to know the pro- [illegible] be raised by taxation, and also the amount [illegible] be required for the support of the State Government until the [illegible] could be collected. Without this information, he should vote in [illegible]. He [illegible] was unwilling that the State should go in debt [illegible] of its existence. He would much rather the officers should [illegible].

On motion of Mr. Caldwell, the rule requiring the resolution to lie on the table for one day, was suspended, and the resolution adopted.

The President appointed Messrs. Lipscomb, Caldwell, Moore, Tarver, Holland, [illegible] and Lewis, as the committee contemplated by the resolution. On motion of Mr. Lipscomb, he was excused from serving on the committee, and Mr. Miller was substituted in his place.

Mr. Caldwell moved that Mr. Smyth, of Jasper, be added to the committee.

Mr. Lewis said he was just about to make the same proposition, and that Mr. Smyth be substituted for himself, as the committee was already sufficiently large. He was willing to aid as far as he could in the attainment of the object, but Mr. Smyth was certainly much better informed upon the subject. He had been chairman of the committee on Ways and Means in the last Congress, and performed the duties of that position with great ability. He was particularly acquainted with the condition of the finances of the country; and could refer to facts.

Mr. Smyth was substituted in place of Mr. Lewis on the committee.

Mr. Jewett offered the following resolution:

Resolved, That the Secretary direct one of his assistants to copy for the use of the Convention, the Colonization contracts made by the President of the Republic, now on file in the General Land Office.

On motion of Mr. Van Zandt, the rule was suspended, and the resolution adopted.

Mr. Holland offered the following resolution:

Whereas, the citizens of the Republic of Texas labor under great inconveniences in the transaction of their business in the General Land Office, owing to the great extent of the territory:

Be it therefore Resolved, That the committee on General Provisions be instructed to inquire into the propriety and expediency of establishing a Land Office at the town of Marshall, in the county of Harrison, for the transaction of the business of the General Land Office for the counties of ———.

Which was read, and laid on the table one day for consideration.

On motion of Mr. Moore, the report of the committee on the Executive Department was taken up, and on motion of Mr. Caldwell, it was made the special order of the day for to-morrow.

On motion of Mr. Van Zandt, the report of the committee on the Bill of Rights, was made the special order of the day for 9 o'clock, to-morrow morning.

On motion of Mr. Cazneau,

The Convention adjourned until to-morrow morning, half past 8 o'clock.

Tuesday morning, July 15th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Evans, from the minority of the Committee on Privileges and Elections, made the following report:

Committee Room, July 12th, 1845.

To the Hon. the President:

The undersigned, dissenting from the majority of the committee on Privileges and Elections, to whom was referred the memorial of Horace Burnham, who claims a seat in this Convention as a deputy from the district of country embracing the settlement at and near the forks of the Trinity river, begs leave to report:

That in the opinion of the undersigned, there is no similarity between this case and any other which has been presented to the consideration of this Convention, but that this case involves all the argument urged in support of those cases, besides many other potent and equitable considerations, the most important of which are—That owing to the remote and sequestered situation of the settlements at the forks of the Trinity, the President's proclamation recommending the Convention was not received by them until nine days prior to the time therein recommended for holding the election. That the settlements are comprised within a portion of Nacogdoches and Robertson counties—that it is the distance of 250 miles from the nearest point in those settlements to the town of Nacogdoches, (the county seat of Nacogdoches county;) that it is the distance of 160 to 170 miles from the place at which this election was held, to Franklin, (the county seat of Robertson county,) and that consequently it was impossible for these voters to comply with the requisition of the President, as in his proclamation is contained that this disability originated not by their act or consent, but by reason of the shortness of the time between the receipt of the proclamation, and the time therein specified for holding the election.

Second—That these settlements from common dangers and common interest, are cemented into and actually form a distinct community, cut off by wide stretches of uninhabited, and in some districts uninhabitable country, from the several settlements in the surrounding counties, therefore it is, that neither Nacogdoches or Robertson have ever extended their civil or political jurisdiction over these settlements.

Thirdly—The boundary lines separating the counties of Fannin, Robertson and Nacogdoches, are so illy marked and defined, that it is frequently a matter of extreme doubt which of these several counties have the jurisdiction.

Fourthly—These settlements now number over three hundred citizens, and are filling up more rapidly than any other portion of Texas.

It is a mistake to suppose that this section of the country is represented by the deputies from Nacogdoches and Robertson; they have but one Representative, the memorialist whose claims are now the subject of consideration.

In view of the foregoing considerations, the undersigned recommends the adoption of the following resolution:

L. D. EVANS.

Resolved, That Horace Burnham is entitled to and be permitted to take his seat in this Convention, as a deputy from the district of country comprising the settlement at and adjacent to the forks of the Trinity river.

Which was laid on the table to come up among the orders of the day.

The Convention then proceeded to the

ORDERS OF THE DAY.

The report of the Committee on the Bill of Rights and General Provisions of the Constitution was taken up, and, on motion of Mr. Cunningham, it was laid on the table for the present.

The report of the Committee on Privileges and Elections, and also the report of a minority of said committee in the case of Horace Burnham, claiming a seat in this body from the settlements near the three forks of the Trinity, was taken up.

On motion of Mr. Evans, the Convention went into committee of the whole, on the substitute offered by a minority of said committee—Mr Lewis in the chair.

Messrs Hensley and Armstrong, of Robertson, were introduced and examined as witnesses.

Whereupon, the committee rose and reported progress, and was, by leave of the Convention, discharged from the further consideration of the subject.

On motion of Mr. Evans, Mr. Hensley was allowed to appear as an attorney, and address the House in behalf of the claim of Horace Burnham.

Whereupon, Mr. Hensley addressed the House as follows:

I regret, Mr. President, the existence of that necessity which has compelled me to appear before this body, in the two-fold light, of witness and attorney. I should not avail myself of the privilege which has been so courteously extended to me, but for the fact that the claims of the gentleman have not been presented to the committee, to whom was referred the consideration of his memorial. Besides, there exists in his mind, a fear that he will not be represented on this floor, and consequently, that the facts involved in the case will never (unless presented by some one out side of the bar,) reach the ear of this House, except so far as they may be evolved by the minority report of the gentleman from Fannin. These considerations, sir, together with the obligations of duty under which I am placed to my friends and neighbors, the gentleman's constituents forbid that I should remain silent.

It is contended by some that the will of the majority is supreme, and that their dictum should, in all cases and under all circumstances obtain. That the ratification by the people, of the President's recommendation as contained in his proclamation of the 5th of May, precludes a minority from dissenting therefrom; and excludes the entertainment of this case before this body. However potent at first sight these reasonings may appear, I must nevertheless be permitted to dissent from them. The minority at all times and under all circumstances have rights and privileges, the infraction of which must of necessity be accompanied with political duplicity and injustice; and the denial of the existence of which contravenes the express declarations of the very fathers of free institutions: who in solemn conclave declared them to exist, and that they were inalienable. The doctrine, sir, of partial representation in a primary organic meeting of the people, to my mind, is so monstrous, and so far outrages all correct ideas of free institutions that I cannot entertain the belief for a moment, that any member upon this floor is so far stultified in his notions of governmental policy as to subscribe to it. Suppose, Mr. President, for the argument of the case, that nineteen twentieths of the citizens of Texas assembled should solemnly declare that the other one-twentieth part were divested of all political rights; and we will suppose, he, the small minority to bow in humble submission to the dicta of their masters. Could you, Mr. President, entertaining chivalric notions of freedom, find it in your heart to applaud this dastard submission? No, sir, you would brand them as having been cowardly recreants, because of their fear to rise like freemen and assert their rights. I propose to prove to this Convention, that three hundred citizens of this Republic have been disfranchised by the President of the Republic; I propose to show that without their act or consent, they have been rendered incompetent to give a legal vote, or one in accordance with the proclamation of the President.

The constituents of the gentleman whose claims are now the subject of consideration, reside in the counties of Robertson and Nacogdoches respectively, at and adjacent to the forks of the Trinity river, and comprise three hundred of the best citizens in the Republic. These men never have voted at any election and were not taken into the computation of the President upon which he based the ratio of representation, and in consequence are unrepresented and must remain so, unless the gentleman's claims are admitted. That these constituents are represented by the gentlemen from Nacogdoches and Robertson I deny.—They do not claim them as forming a part of their constituency, nor do they know any thing about their locality, numbers or interests. I must be permitted to contend, that owing to the isolated and sequestered situation from the settlements in the respective counties in which they reside, that they are as much represented by the deputies from Bexar or San Patricio, as they are by the gentlemen from Robertson and Nacogdoches.

I shall now proceed, notwithstanding the adoption by this body of the Procrustean rule as recommended by the President, to show that this gentleman has claims upon this House—such claims as involve the most potent principles of equity and justice. I propose the presentation of two series of facts in my opinion, sufficient of themselves, to establish his claims to a seat in this body.

It is a well established fact that in the vicinity of the place at which this election was held, the proclamation of the President recommending that Convention, was not received until nine days prior to the time therein recommended for holding that election It is also known to gentlemen on this floor, that it is the distance of 250 miles from this place to the town of Nacogdoches, the county seat of Nacogdoches county, and that it is the distance of 170 miles from this place to Franklin, the county seat of Robertson county; and that it is a wilderness country between this point and Franklin, and also, between this point and Nacogdoches, difficult to travel in consequence of there being no roads, and its being infested by Indians.

It will therefore be readily perceived, that it was physically impossible for the voters to comply with the requisition of the proclamation, in consequence of the shortness of the time between its reception and the time therein specified for holding the election. The question of law then recurs, can the rights of any man or set of men be prejudiced, except by his or their own act or consent? I contend that the maxim of law that they *cannot*, amounts to an established axiom with the legal profession. Since then, it was impossible for those voters to give a legal vote, or one in accordance with the recommendations contained in the proclamation, they adopted the only remaining alternative, which was to select one of their own fellow citizens to represent their interests, relying upon the justice of this honorable body to legalize his claims. You have the power, the *equitable* power, and their prayer is that you exercise that power, and thereby permit them to have a voice in your deliberations.

Again, there exists another disability which prevented these voters from giving a legal vote, over which they had no control, and which goes to establish and make binding upon this House, the admission of the gentleman's claims.

It is an established fact, that the county boundaries of Fannin, Robertson and Nacogdoches are so illy established and defined, that it is a matter of question with a large portion of this gentleman's constituents, as to the county in which they reside. If, then, time had been given, in which to have acted under regular writs of election, a large proportion of these voters would not have known in what county to have deposited their ballots.

In view of these considerations, in connection with others contained in the minority report, I leave the matter to your superior judgment, knowing that the importance of the case will insure for it your respectful consideration.

Mr. *Evans* said he had one or two suggestions to make. He laid down as true the proposition that this Convention had no authority to enquire into the qualifications of any of its members This Convention has only power to form a Constitution, which implies the right to make use of such means as may be necessary, and only such as may be necessary, to carry out that power. It can therefore elect Clerks, a Sergeant-at-Arms, Door-keeper, and all necessary officers But whenever it undertakes to decide upon the rights of its members, whenever it takes the position of excluding any member, it transcends its powers, and can as well turn one Deputy out of doors as another. He would affirm this, that his Honor the President might as well be excluded from the privileges of the House as Mr. Horace Burnham. He would affirm again that if this House should believe it necessary for the purpose of forming a Constitution, it might invite Dr. Franklin himself, if living and in this country, and in the possession of his once splendid powers, to take a seat here, not only to participate in the deliberations of this body, but to vote as a member. This Convention has the power to call to its aid every means and every individual that may be made available for the purpose of furthering the objects for which it is assembled. The great object before us is the annexation of Texas to the government and territory of the United States; the formation of the Constitution is a means only. Now if it be made to appear that it is necessary to the consummation of this great object that Mr. Burnham should take his seat here, as the representative of a large and respectable portion of the country, he trusted this House would permit him so to do. Now annexation is a contract between three contracting powers, the government of the U. States on the first part, the government of Texas on the second part, and the people of Texas, the whole people, not this, that or the other section of the country, but emphatically the people of Texas, constituting the third party. He would simply suggest the question, if this contract would bind the U. States unless every portion of Texas should be heard? Would it be binding upon this portion of the country numbering more than three hundred citizens? Gentlemen labor under a fatal mistake in supposing this portion to be represented by the delegates from Nacogdoches and Robertson. The large settlements in Santa Fé are just as truly thus represented, as the country about the Forks of the Trinity. He might say that with the exception of one of the gentlemen from Nacogdoches, (Gen. Rusk,) on account of his great military renown, a large portion of those citizens do not know the deputies from those counties; many have not heard of them. Many of them have recently come into the country; and there is no mail route passing by them. This is a district entirely cut off from the surrounding counties, and a border country. Suppose that the work of annexation should be consummated on our part—and the contract signed, sealed and delivered; he would not affirm or deny the proposition, but merely suggest it: suppose that this community, numbering over three hundred citizens, should have intelligence and moral worth sufficient to make out a case and submit it to the United States. They live upon the frontier: where could the boundaries of this country be placed? They might take a stand which would ultimately defeat annexation. Not that it ever entered their minds, for they are as desirous of annexation as any member of this body. Most of them are new emigrants from the highly respectable and democratic States of Arkansas and Missouri. He saw many of them on their way. Polk and Dallas, and Texas, with the very juice itself, was inscribed upon their waggons. They had rights, and they ought to be respected.

Mr. Young moved to lay the report on the table till to-morrow, which was lost.

The question was then taken on the adoption of the substitute as offered by Mr. Evans, giving to Mr. Burnham a seat in this body as a delegate from the settlements of the three forks of the Trinity, and lost by ayes and noes as follows.

Ayes—Messrs. Evans, Everts, Hunter, Latimer of L., Latimer of R. R., Tarrant, Wright and Young—8.

Noes—Messrs. President Rusk, Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Clarke, Cunningham, Cuney, Darnell, Davis, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McNeill, McGowan, Miller, Moore, Navarro. Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Van Zandt, White and Wood—48.

The question was then taken on the report of the committee on Privileges and Elections, declaring that said Horace Burnham is not entitled to a seat in this body, and the report and resolution of the committee were adopted.

The resolution of Mr. Cunningham of yesterday, instructing the committee on the Judiciary to enquire into the expediency of inserting a clause in the Constitution, providing for the appointment of officers to enquire into and cause to be brought before the District Court for adjudication,, land titles forfeited under the laws of Coahuila and Texas, &c., was taken up.

Mr. *Cunningham* said he wished to explain his object in introducing this resolution. It is known to every person upon this floor, that all titles to lands issued by the government of Coahuila and Texas, had certain conditions annexed to the grants, upon the non performance of which the titles were divested, and the lands became again the property of the State. It is true that many of these conditions were removed by the land law of the Republic of Texas, in cases of particular grants to colonists for a single league and labor. But there were some conditions annexed even to these grants, which have not been removed. And most of the conditions annexed to the large grants have not been touched. If not complied with those lands are now the property of the Republic of Texas. By the Constitution of this Republic the lands of all persons who took up arms against it, who aided the enemy, or left the country for the purpose of avoiding a participation in our revolutionary struggle, have been forfeited. Notwithstanding the law, the Judiciary of the country have held that there is no mode by which these titles could be brought before their tribunals for adjudication; they have acknowledged the jurisdiction of the District courts, but as Congress has failed to provide the *modus operandi*, they have refused to entertain them. Congress has hitherto refused or neglected to pass any law designating the mode by which they can be adjudicated. Hence the laws and the Constitution relating to this matter have become an absolute nullity. In consequence of this state of things, many lands in his part of the country are tied up. There are three titles set up for these lands; first, that of the original grantee: second, that of the Republic of Texas, now dormant; and third, that of the settler or locator. His object was to have the whole matter brought before the able and learned committee on the Judiciary, that some action might be had upon the subject.

Mr. *Kinney* said, he had not intended to take any part in this discussion. But he thought he could see into the object of this resolution. He thought it was to divest vested rights from the citizens of the depopulated counties, and to deprive them of their lands. He would give his reasons for that opinion. Since his residence in the western part of the country, he had had the honor to represent the counties of Goliad, Refugio and San Patricio in the Congress of Texas. He knew that many locations had been made by persons residing in different parts of the Republic upon lands granted to the citizens of those counties under the old colonial law or Empresario grants. He had heard it remarked by many who had made these locations, that in consequence of the citizens leaving their lands and going to the United States, or to the interior settlements of Texas, that removal took away their rights to those lands. He had also heard it said that many of these citizens came into the country when lands were of no value, and received large grants, some of them for eleven leagues, of the best lands in the country; that it was too much for them to have; they had not done any more for the support of the country, nor fought any more for the country, than those who afterwards came in, and who did not get so much. The object of this action was to take these titles out of the control of the Judiciary.

He knew many families residing in the counties of Refugio and San Patricio, the heads of which had received a league and labor; and afterwards, having been killed, their widows and orphans had gone to the United States or elsewhere for protection, for they could not reside there; and their lands have been located by individuals who intend to hold them. If the question of right in these cases is allowed to go before the proper tribunals, the Judiciary of the country, the true owners may hold their lands If on the contrary, the proposed action is taken here, an individual may be appointed who may be a part owner of some of these claims located upon the lands of others. He was willing to have the rights of all the people whom he represented adjudicated before the proper tribunals. But he wanted no action upon the subject on the part of this Convention. The evidence could not be brought here to show whether or not certain individuals were the most proper persons to investigate the rights of others. For that reason he hoped the resolution would not be adopted.

Mr. *Brown* said: I also hope that resolution will not be adopted The several committees have now made their reports; but little remains to be done. And if the Convention will confine itself to its proper office, our actual duty will be very speedily discharged. If I understand what is meant by the Constitution of a land, it ought to be as much as possible a law for the administrators of the government, and not a law for the people. The object of the resolution offered by the gentleman from Victoria can as well be effected by the action of the Legislature as by that of this body. And if we infringe upon the rule once, and take legislation into our own hands, upon a subject which it would be just and proper for the first legislative body hereafter to be assembled here to take into consideration, we may do it to any extent; and our Constitution, instead of forming a general rule of action for the administration of the government, will swell into a formidable code of legislation. The end proposed, if just and desirable in itself, can be as directly and effectually attained by application to the Legislature, as to this body. The subject involves several difficult and delicate questions; and, sir, in the haste in which a report might be framed and adopted by this body, in the hurry of the moment something unadvisedly to us might steal into that Constitution, which would operate injuriously upon private rights, and on that ground I will oppose it. The Legislature has the power to make provision for cases of forfeiture and escheats, and the power to impose duties upon the District Attorneys of the several Districts; and, sir, for fear of acting inconsiderately in this matter, for fear of taking away rights from persons to whom they belong and vesting them in persons to whom they do not belong, I shall oppose the resolution. No necessity calls for the immediate action of the Convention upon the subject. It may be fully provided for hereafter, and I consider that in taking up the subject we shall transcend our powers, or rather exceed the purpose for which we are sent here. That purpose is the formation of a general organic law for the government of the country, and the resolution of the gentleman from Victoria falls nowhere within the scope of that object. Questions of this kind should be shunned by the Convention. I hope we shall confine ourselves to the simple duty for which we are assembled, that of constructing an organic law for the general government of the agents of the people. In fact it would be taking an illicit advantage of parties, if this Convention should erect itself into a Judicial tribunal, and make an *ex parte* decision on their rights. These rights should be decided by fair judicial controversy, and in no other way. Shape the Constitution as you will on this subject, use the utmost precaution, and you are yet liable to impair rights: for the spirit which pursues these claimants is not a friendly one, and they have no interested advocate on this floor. There is no *justice* in this demand for a remedy from the Convention; though there is obviously great *impatience*. If there be any forfeited rights, they must enure in the first place to government. If the government should remit its claim, it will be lost to them. The locations were wilfully made with all these contingencies plainly in view. The government is the party to begin the contest. It has always been, and will always be in her power to do so. Yet I know of no equity which ought to give these persons a compulsory course against the government to make it institute suits for *their* benefit. They knew when they made the locations that the government must establish its right, before they could succeed to it. You could not persuade them to become trespassers as in common cases, and let the right come up in that way, leaving out the government as a party. The general welfare should always be entrusted to the Legislature, and it furnishes strong proof against the general utility of such inquests and investigations that the Legislature has not provided for them before. I hope, if the tardiness of the Legislature to move in this matter was, as we are bound to infer, for the general welfare of the State, that it will not be hurried for the advantage of the few.—At least that the Legislature may stand untrammelled, and our country enabled to present a chaste and undistorted Constitution to the world.

Mr. *Howard* said: I shall vote against the reference of the resolution, as I shall vote against the introduction of any such principle into the Constitution. All who have paid attention to the discussion which has arisen upon the subject of annexation in the United States, are perfectly aware that one of the leading charges against the people of this country, is that of driving off the Mexican population, and appropriating their possessions. Whether true or false, if we insert a provision which may give color to the charge, take my word for it, it will be very difficult for this Constitution which we are about to form to pass the Senate of the United States. This point will be seized upon at once, as affording in itself conclusive proof of the justice of the charge. This action is entirely unnecessary: as this Convention has no control over the subject, which does not already belong to the Legislature. It does not come within the limits of a Constitution, and it may perhaps lead to its rejection. We should be very careful how we place anything in our Constitution violating the principles of the law of nations, invading the sanctity of private contracts, or infringing the rights of private property. You may depend upon it, that the grave Senators of the United States, learned in public and constitutional law, will examine our Constitution with great scrutiny. Every such instrument which passes that ordeal will be closely scrutinized, to see that it conflicts with none of the great principles of the Constitution of the Union, so wise, so impartial, so equitable. Texas has been peculiarly the object of aspersion and abuse; and it is well known that there is a violent political party in the Union, ready to pounce upon her the moment she presents herself for admission. This is an important crisis; it behooves us to be exceedingly careful in our action here, to respect the great principles of national law, the law of the whole world no less than of the United States, as well as the law of private property; to evince that upon all subjects we are actuated and controlled by a sense of justice and right.

The ayes and noes being called on the adoption of the resolution, were as follows:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Brashear, Clark, Cunningham, Evans, Everts, Forbes, Gage, Hemphill, Hunter, Irion, Jewett, Latimer of L. Latimer of R. R., Lewis, Lumpkin, Mayfield, M'Neill, Moore, Parker, Runnels, Tarrant, Van Zandt, Wright, Wood, White and Young—29.

Noes—Messrs. President, Baylor, Bache, Brown, Caldwell, Cazneau, Cuney, Davis, Henderson, Hogg, Horton, Howard, Jones, Kinney, Love, Lusk, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth and Standifer—25.

So the resolution was adopted.

On motion of Mr. Van Zandt, the Convention proceeded to the consideration of the Bill of Rights.

Mr. Moore offered a preamble to be prefixed to the Constitution, which is as follows:

Preamble:—We the people of the Republic of Texas, having the right to admission into the government of the United States of America, in pursuance of a joint resolution of of the American Congress, entitled, a "Joint Resolution for annexing Texas to the United States," approved March 1st, 1845.—In order to establish justice, ensure tranquility, provide for the common defence, and secure to ourselves and our posterity, the rights of life, liberty and property, acknowledging with grateful hearts, the goodness of the great ruler of the Universe, in affording us an opportunity, deliberately and peacefully, without fraud, violence or surprise, of forming a new Constitution of government, and devoutly imploring his direction in accomplishing this important object, do mutually agree with each other, to form ourselves into a free and independent State, by the name of the "State of Texas," and do ordain and establish the following Constitution.

On motion of Mr. Mayfield, the preamble was referred to the committee on general provisions.

On motion of Mr. Baylor, the Convention resolved itself into committee of the whole, on the Bill of Rights—Mr. Lewis in the chair.

In the latter clause of Article 2d, Mr. *Evans* proposed to strike out "but in consideration of public services." The committee refused to strike out.

Mr. *Forbes* proposed to insert, in the Bill of Rights, a provision that taxation should be forever uniform and equal. Rejected.

After the latter clause of Article 4th, Mr. *Lipscomb* proposed to add: "but it shall be the duty of the General Assembly, to pass such laws as shall be necessary to protect every denomination of christians in the peaceable enjoyment of their own mode of worship"

Mr. *Van Zandt* thought the subject was amply provided for in the first part of the Article. He conceived that religious denominations need no protection except that of the Almighty. it left free to worship God according to the dictates of their own consciences.

Mr. *Lipscomb* replied, that he had often seen the solemnities of public worship interrupted by the light and frivolous. Without laws for this purpose, they will be at all times liable to interruption.

Amendment made.

Mr. *Mayfield* proposed, after "rights of conscience," to insert "in matters of religion." Adopted.

Mr. *Moore* proposed to substitute for the 5th and 6th articles, the one contained in the Bill of Rights of the Republic, as follows:

"Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege.—No law shall ever be passed to curtail the liberty of speech or of the press: and in all prosecutions for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and fact, under the direction of the court."

His reasons he would briefly state. It was an admitted fact, that the press of the country should be free: free as the winds that wave our national banner. How then can it be free, unless freemen have a right to speak the truth? He only is a freeman whom the truth makes free; and if he was to be imprisoned, and his hands were to be shackled, because he spoke the truth, where was this boasted freedom? The article upon the subject first adopted by the people of Texas, was one, as he considered, in consonance with the true principles of liberty.

Mr. *Van Zandt* said that the 5th article read word for word with the amendment proposed by the gentleman. That amendment differed only in the 6th section. Now he conceived that the adoption of the article proposed by the gentleman from Harris might result in great injury to the people of the country. Although he was as much in favor of the freedom of the press as any in the land, he could not concur with the gentleman to the full extent of his principles. He could not concede the right to attack the private relations of private citizens. The first article secures to all intents and purposes the liberty of the press. But if you furnish the libeller with the shield contended for, it will give rise to more strife, more difficulty and bloodshed throughout the land than the abolition of the criminal code itself. He was for breaking off all shackles from the press; yet if an editor should invade the privacy of domestic relations, he wished to see *him* punished. He was gratified to believe that the press of the country is now in the hands of men of moral principle, men who regard private reputation, and the peace of families. But it might not be always thus: and he thought it best to guard against the possible evils consequent upon a change in this respect. He trusted the clause would be retained in its present shape.

Mr. President *Rusk* said that he was as much opposed to slander as any other individual. He thought it had been too much indulged in by the press: at the same time, it would not do to shackle it. The amendment is precisely the same with the report, so far as the 5th section goes. The 6th section draws a distinction between individuals in a public capacity, and in private life; and while it allows him who slanders an officer of the government, to come forward and prove the truth of his charge, it denies that privilege to him who sees proper to publish or say any thing of an individual in a private capacity. If an individual were to raise his hand against the laws of the land, to head a mob for example, however public the act might be, yet if an editor sees proper to animadvert upon his conduct, he cannot allege the truth in his defence. He believed that the law as it now exists on this subject, so far from having been a benefit, has really been injurious.

Mr. *Moore* said, that if gentlemen would investigate the operation of this single clause, they would find it most injurious. If he was at liberty to abuse a man in all his private relations while Governor, and yet could not do the same with a private individual, how much more injury would he do to the community and the country? If while a man is a candidate for public office, he is assailed, and the truth in this case is allowed to be given in evidence, if he proves the charges to be false, good is the result; and if they are shown to be true, that man does not attain the station which he would pollute. But he held it to be wrong, for an editor, when an individual was once elevated to office, to publish his faults and crimes to the world, he should rather hide them, for the reputation of the country.

Why should we go back to the days when the tithing-men in Connecticut went about whipping beer barrels for working on Sunday; to those days when the select-men decided to adopt the laws of God until they could make better? The great principles of liberty have been improved from age to age. The article which he proposed, is a credit to the framers of the first Constitution of Texas: it is creditable to Texas itself. It tends of itself to dispel the calumnies against our country. Here is the evidence that the framers of our Constitution were so pure and high minded, as to be willing that their characters should be held up to view; that the truth should be spoken at all times in relation to them. He trusted it would be ever thus in Texas: and that not only the press, but the freemen of the country would be truly free.

Mr. *Lipscomb* said he thought the age has passed by when the maxim prevailed, that the greater the truth, the greater the libel. In all the modern Constitutions, he believed, it was provided that the truth may be given in evidence. He did not think we stood in need of that shield or protection to be thrown around us, whether as private men, as public officers, or as aspirants to office. He had been disposed to exclude the limitation introduced into the report of the committee: he was for opening the door wide, and permitting the truth to be given in evidence in all cases. Few are so base as to meddle with female character. And so far as he knew, female character had never gained any thing by a public investigation in a court of justice. Public opinion will do justice in matters of this kind.

Let us write what we will, being answerable to any prosecution which may be brought against us for the abuse of the privilege. He had always thought there was much good sense in the remark attributed to Dr. Franklin, that no principle was better established than the freedom of the press, but at the same time the liberty should not be sustained to cudgel those who abuse it.

He would support the article proposed by the gentleman from Harris, with one amendment. He would move to strike out "under the direction of the court."

Amendment accepted by Mr. Moore.

Mr. *Van Zandt* said he was satisfied that gentleman had not examined the subject, or they would have seen that the provision here inserted is contained in the greater number of the Constitutions which have said any thing in relation to prosecutions for libel. He would call their attention to the provisions on this subject in the Constitutions of Ohio, Indiana, Alabama and Arkansas. These are four of the new States. This is not the exploded doctrine of Pennsylvania adopted in ages past.; the framers of these Constitutions had the advantage of all the light and experience of former times.

The gentleman from Harris contends that if there is to be any discrimination, it should be in favor of men in a public capacity: that the private citizen is a legitimate object of attack to him who wields the power of the press: but so soon as he attains office, so soon as he gets into power, this mighty arm, wielded by men of influence, talents and capacity, is to fall nerveless: that the weak are to be subject to attack, and the powerful suffered to pass with impunity. He would ask if that is the doctrine of republicanism—if that is what we are assembled here to establish in this Constitution? Is it not the contrary that we should aim at, to protect the weak and defenceless: to make the strong, the proud and the powerful to feel that they occupy a common level with the common people of the country? He would say that this was one of the objects for which he came here as a member of this Convention, and not to attack the feeble and defenceless, while he should truckle to power.

It has been said by one of the gentlemen who addressed the Convention, that he had never known female character to be benefitted by investigation. He wished it therefore to be untouched; that by the sanction of no law should any one be suffered to traduce the fair character of woman. If individuals are unworthy, let the society in which they revolve direct and control them; it needs not the powerful arm of the press. The breath of suspicion is sufficient to destroy the brightest character in woman; like Cæsar's wife she must be, not only pure, but unsuspected. And he who shows a disposition of mind so impure, so unholy, and so base, as to utter calumnies against her, should never be permitted to shield himself by the investigation of the truth of his assertions.

He would not curtail the liberty of the press, but wished to check its licentiousness; and therefore hoped the substitute would not be adopted.

On motion of Mr. *Jones*, the question was divided; and the committee refused to strike out the 5th article.

Mr. *Evans* moved to strike out the last clause of the 5th section.

Refused to strike out.

Mr. *Forbes* moved to strike out the 6th section, and insert the amendment offered by the gentleman from Harris: "in all prosecutions for libel, the truth may be given in evidence, and the jury shall have the right to determine the law and fact." Adopted.

Mr. *Mayfield* moved to insert, "provided the truth shall not avail as a defence where malice or a corrupt motive is proven." Adopted.

Mr. *Mayfield* moved a further amendment: after "fact," insert "under the direction of the court as in other cases." Amendment made.

On motion of Mr. Forbes, the committee rose, reported progress, and asked leave to sit again. Report adopted.

On motion of Mr. Van Zandt, the Convention adjourned until 4 o'clock P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Latimer of R. R., the rule requiring a separate journal of the committee of the whole, to be kept was suspended for the present; he also gave notice that he would, on to-morrow, move to dispense with said rule.

On motion of Mr Cazneau, the Convention went into committee of the whole—Mr. Cazneau in the chair.

The substitute for the 6th article of the Bill of Rights was adopted.

In section 8th, Mr. Mayfield moved to strike out "information," and insert "presentment."

Mr. *Anderson* said: by the Constitution of the Republic of Texas, no man can be arraigned for any offence without being first presented or indicted by a Grand Jury. Now the history of this country presents many cases of misdemeanors and malpractices in office, and no method is pointed out for redressing these grievances. Any man may be guilty of malfeasance in office, which at the common law is indictable, if no mode of redress is furnished by the laws of the country. I will state a case which may be in point. Suppose an individual in the discharge of his official duty, should fail to comply with the requirements of the law in its fullest sense; and a failure to comply amounts to a misdemeanor, and together with that inflicts a serious injury upon the rights of the community, yet there is no possible method by which he can be punished; for as the law now stands, it will first require the presentment by a grand jury, by an indictment or presentment, which course, as pointed out from experience, has been wholly impotent. He will always have friends upon the grand jury. And it will always be so, unless some mode is provided more efficient than that proposed by the amendments, until information according to the common law meaning of the term shall be introduced, information as distinguished both from presentment and indictment. I oppose the amendment, because to put "presentment" in the place of "information," would place us in the same attitude we occupy now. The gentleman will not deny the existence of the evil. If he will provide any mode of reaching malpractice or malfeasance in office, I will cheerfully vote with him. I hope the section will be sustained in its present shape. It does not deny a man any great privilege; he has still the trial by jury: and it does not extend to those cases where life or liberty is concerned. I hope he will withdraw his motion and let the section stand, with its contemplated benefits.

Mr. *Mayfield* said: for myself, I am no stickler for phrases or terms. It appears to me that we should pursue the course most consistent with the general principles upon which we declare ourselves to be acting.—If I had entertained any prepossession before for the use of the term "presentment," the argument of the gentleman has convinced me of its propriety. He has given us a clear and distinct meaning for each of the terms. He tells you that "information" is a species of proceeding known to the common law, instituted by officers of the crown, for the purpose of redressing minor offences and grievances. In this country we have the good fortune to have neither crown nor officers of the crown. If, then, this proceeding under the common law belongs to the crown and the officers of the crown, of course we should discard it from a republican Constitution. By the term "presentment," we require the previous action of the grand jury before a man can be arraigned, before the crown or the officers of the crown can reach him: and the citizen has some security for his life and property. The argument of the gentleman has fully convinced me that the term "presentment" is more republican in its character, and should be incorporated into the Bill of Rights, and the term "information" discarded. Amendment rejected.

In the 12th section, Mr. Lipscomb proposed to insert, after the word "limb," the following: "nor shall a citizen be again put upon trial for the same offence after a verdict of "not guilty."" Adopted.

Mr. Evans proposed an additional section, to come in between the 14th and 15th, as follows: "no person shall ever be held liable for the debts, defaults, or miscarriage of another." Rejected.

On motion of Mr. President Rusk, the 16th section was stricken out: also, the 18th section.

In the 20th section, Mr. Lewis moved to strike out the word "proper." Stricken out.

In the 21st section, Mr. Howard moved to strike out "General Assembly," wherever it occurred, and insert "Legislature." Adopted.

On motion of Mr. Van Zandt, the committee rose, and reported the Bill of Rights, with the amendments, to the Convention, and asked to discharged from the further consideration of the same; which report was adopted.

On motion of Mr. Van Zandt, the Bill of Rights was taken up by the Convention.

The amendments of the committee of the whole being first in order, were taken up severally, as adopted by the committee.

In the latter clause of 2d section, Mr. Armstrong of J., moved to strike ut "except for public services;" which was lost.

Mr. Forbes offered the following, to come in as section 3d: "Govrnments being instituted for the benefit and general welfare of the peole, the burthen shall be equally distributed among all classes, and taxaon shall be forever uniform and equal;" which was rejected.

Amendment to article 4th, in the 6th line, after the word "conscience," sert the words "in matters of religion," was adopted.

The following was adopted, as an addition to the 4th article: "but it hall be the duty of the Legislature to pass such laws as shall be necessary to protect every denomination of Christians, in the peaceable enjoyment of their own mode of public worship."

On motion of Mr. Hunter, the word "Christians" was stricken out, and the word "religious" inserted before the word "denomination," so as to read "every religious denomination."

The Convention then proceeded to the following, offered as a substite to the 6th article by the committee: "and in all prosecutions for bels, the truth may be given in evidence, and the jury shall have the ght to determine the law and the fact, under the direction of the court in other cases, but the truth shall not avail as a defence, when malice a corrupt motive is proved."

Mr. *Love* said: I am greatly opposed, Mr. President, to the amendent as adopted by the committee. It is too late at this day for any one question the liberty of the press. But, sir, I hold liberty to be one ing, and licentiousness to be another. Now whenever you protect press in freely investigating the the conduct of men in a public cacity, and permit the truth to be given in evidence, you do all that is cessary for the public safety. When you adopt a different rule, you ly encourage licentiousness: you aid in the propagation of slander d its circulation from one end of the country to the other; you do what in you lies to break up the peace and repose of society. What good can be subserved, what benefit arise from the publication in the newspapers of every little indiscretion which may occur in the community? Of all classes of people upon the earth, the man who stirs up strife among neighbors is the most to be despised and avoided. In private life he is excluded from society. And yet you will confer upon the public press the privilege to slander at will, when there is no possible redress, no punishment whatever, for the circulation of the vilest calumny. What right has the editor of a newspaper more than any other man to gratify his own malevolence or that of any one in this manner? You may take up several of the New York city papers, and you will find them filled in every corner with letters containing the most disgusting details of slander. For what purpose are they thus crowded? For that of catering to the morbid appetite of the public for this species of detraction it is to give them a sale, and for no other end. You may say, you can go there to sue them; but who does it? Who can afford the expense? Whereas in the other case you have only to direct your lawyer in New York to institute an action for a libel, and you may have them punished. You are told that in adopting the system which I prefer you are abridging the liberty of the press. Sir, you are not placed on an equality with these men. Even if you indict and punish them, the rectification never goes to all the persons whom the slander has reached. I think that policy and propriety and the fitness of things require that you should hold a check over them. They have no business whatever to enter into private character; let them confine their strictures and remarks to the public officers of the government. This may be necessary; because the whole community has an interest in the subject. But I think it highly improper to permit them even to retail the truth of a man living five hundred or a thousand miles from them: because here no public interest is served. You had better appoint public censors in each county, whose business it should be to hunt up every little indiscretion, and bring it before the public. I think from every consideration of fitness and propriety, that they should be restricted at least to an honest discharge of their duties as public editors; I would not allow them the privilege of circulating slanders against persons with whom they can have no intercourse.

For myself, I have made it a rule not to notice or care for what may be said of me in public prints. It was once stated in one of them, that I was seen drunk, staggering through the streets at midnight. Now although I declare that I was never in my life drunk, I did not think it necessary to correct the slander. Many of my friends, however, felt some interest in the charge, and I received several affecting letters, imploring me not to become a drunkard. Had I been engaged in mercantile, or other professional business, the charge might have seriously affected me, and have forever blighted the fairest prospects. Now, sir, let me ask what public good was promoted by such a charge? I was in no public office, or seeking any. Its only effect could be to inflict pain, and its only design to do a private citizen an injury. No justification should avail an editor, governed by such feelings of malevolence.

Mr. *Moore:* It does not astonish me, Mr. President, to hear such sentiments expressed by the gentleman from Galveston, knowing their similarity to those entertained by the party to which he belonged in the United States. In the days of Adams and Jefferson, that party attempted to establish a gag law, but the stern democracy of the country rose throughout the land, and crushed the futile conception in its birth. Sir, are we to be told at this day that the press is to be gagged, that editors here are to be shackled in the expression of opinion? I laugh at the conceit. The press of this country is as free as the clouds above us: it is beyond the reach of man or human laws; for the great public opinion of the country sustains its freedom. The people have said that it should be free, and free it will be. No laws that you can pass here, or that the Legislature after you can pass, can take from the editor the great privilege allowed him here. He has the right to speak freely upon every subject: but he must speak the truth. It will be recollected perhaps by gentlemen here, that I took charge of the first paper established since the formation of the government, and having been in charge of it up to this period, am regarded as the oldest editor in the country. But, sir, I cannot look back to the time when I have seen cause to regret the law contained in our Constitution asserting my freedom It has been stated that the press of this country will bear a favorable comparison with that of any other; and why? Because it is free. And if the editor should hereafter arise, who should scatter around him the arrows of foul calumny and detraction, his paper would fall to the earth; for the people of the country would not sustain him. I did not expect again to be called upon to speak upon this subject. I had thought the battle was fought this morning, of freedom against tyranny. Freedom triumphed then, as freedom ever will triumph. Do not, I beseech you, permit this Constitution of our country to take with it the exploded dogmas of former days. The article alluded to by gentlemen in the Constitution of Ohio, was derived from the old Pennsylvania Constitution of 1790. It has crept into the charters of other States; but you will notice that the new States have adopted an amendment of this kind. And now, I believe the doctrine is considered as exploded. The wise framers of the Constitution of Texas adopted an article which gives true freedom to the press; an article which I think an improvement upon the older Constitutions. I hope the amendment may be adopted, embodying as it does the intelligence of this latter age; and rejecting the exploded doctrines sustained by the Federal party of other days, and indignantly spurned by the illustrious Jefferson, more traduced and calumniated as he was than any other distinguished man of his day. That great man, when a slanderous attack upon him was brought to his notice, replied, that he rejoiced that the press was so truly free, that the officer highest in the nation might be treated with the same freedom, and censured with the same impunity as the least individual in the Republic.

Mr. *Mayfield* said: Mr. President, after the grave and admonitory remarks of the gentleman from Harris, I must confess that I feel somewhat at a loss how to address the Convention in expressing the views and opinions which I entertain upon the question now before it for determination. Never having belonged to that party in such severe terms rebuked by the gentleman, having been of that which he has so highly eulogized, and yet differing so widely from him in opinion as I do, I feel some difficulty and no little dread in giving free utterance to my opinions, lest, forsooth, I might be turned out of my political church. However dangerous and hazardous the experiment may be, Mr. President, notwithstanding the serious and solemn monitions received from him, I yet feel myself called upon by the occasion, although it should result in my entire exclusion from the political family to which I have belonged from my infancy, to express freely my opinions in relation to this question. I do not hold that these particular doctrines are characteristic of either the Federal or Democratic party. I disclaim upon my part, having been ever a member of the Democratic party myself, as one of its principles and tenets, that freedom means licentiousness and mendacity. I say also as one of its members, I disclaim the doctrine that a malicious and mendacious editor is to be permitted to fulminate his slanders at will, and more especially, with regard to private individuals. If such a tenet has obtained a prominent place in the creed of Democracy, I for one have never subscribed to so damnable a doctrine. Nor in examining the action of the various parties in relation to this subject do we find any division of sentiment. For when we look back to the Constitution of the United States, framed as it was by the collected wisdom of our ancestors, constructed by a body of the greatest men ever called together upon earth, we find the principles incorporated in that instrument to have been the result of compromise on the part of men of all parties, who came forward there and made mutual sacrifices and confessions, as we are called upon to do so upon this occasion, in order to produce something which shall be equitable and just in its results, and secure to each and every citizen the unmolested enjoyment of all his rights and privileges. In referring to the provisions upon this subject, contained in the various State Constitutions adopted from 1776, down to the present period, you will find in some of them some modifications of the principle embraced in those of that day. But, Mr. President, I will venture the assertion, you will not find any State which has formed a Constitution in modern times, even in this enlightened age, where improvement is so rapid and so great in the arts and sciences, and the principles of government, when these great and essential principles of liberty and freedom are becoming more fully understood throughout the world, you will not find a single instance of any deliberative body going so far as the gentleman contends for in his argument. He tells us that the principle which we are now desirous to incorporate in the Bill of Rights is a relic of the damnable and exploded doctrines of the Federal party. He does not swear, it is true: but his attitude and manner clearly indicate that such was the term he intended. The gentleman argued, that the provision contained in a Constitution read by the gentleman from Harrison (Mr. Van Zandt,) was to be found in a Constitution of 1790, and was therefore exploded: that the genius of the age has discarded the principle, and freedom demanded the licentiousness of the press. If, Mr. President, his reading and his memory has kept pace with the history of the country, and certainly the reading and the memory of the conductor of a public journal, should furnish him with an accurate knowledge, not only of dates, but of facts, he would have found this principle incorporated into the Constitutions of States as free as we ever can become, as liberal and as enlightened as any. Within the last few years, some of them have adopted the very provision we are now seeking to engraft here now. In the Constitution adopted by the recent Convention of Louisiana, the features of which have generally met the approbation of the gentleman from Harris, more particularly those which are in any respect an innovation upon ancient principles, we find the same provision, at least in spirit and sentence. Similar provisions are to be found, also, in the Constitutions of Arkansas, Illinois, Missouri, Mississippi and Alabama. In Tennessee, so late as 1835, the Convention of the people, which met there a few years ago, had the same subject under consideration. And they did not conceive that freedom would be lost, and the standard of liberty prostrated to the earth, unless licentiousness should be secured to the press. And the Constitution of that State has incorporated precisely the provision we seek to have in ours. Is this going back to ancient times, or reviving exploded doctrines? Nothing had arisen, in that wise and chivalrous State, so late as 1835, to justify a change, such as is sought here by gentlemen. Let us read the article referred to in the Constitution of that State:

"Article 1. Sec. 19. That the printing press shall be free to every person who undertakes to examine the proceedings of the Legislature, or of any branch of officers of the government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases."

The gentleman has pointed out a portion of the declaration of the

Constitution of Pennsylvania, which he says is in the same language as contained in that of Tennessee And hence he draws the inference that the doctrine here recognized is ancient and exploded; a doctrine so recently ratified by the sense and intelligence of the State of Tennessee: I admit its antiquity. These are principles like old wine, which improve by age. And these are great principles declared at an early period of the country, which I hope will stand as firm as the everlasting hills, and it will be regarded, I trust, as sacrilege and an abolition in the sight of any party, to seek to disturb or infringe, in the slightest degree, upon these sacred principles. Are principles to be rejected here, because they have the sanction of ages to justify them? Are they to be contemned and reviled here because our forefathers adopted and lived under them in the enjoyment of all the rights and privileges necessary to security, liberty and happiness? But we are told, forsooth, that the press of Texas has a high standing throughout the world, and has acquired that character, because the press is free. Now I had flattered myself, for the credit of the country, that there was another reason which might be given for the character and standing which our press enjoys. not only at home but abroad. I did not find it in the fact exclusively of its being free in our country, but had imagined it was, because it had been conducted by men of moral worth, integrity, and truthfulness. But we are told its high character is to be regarded as the effect exclusively of its freedom; then it is not that of the intelligence, virtue and moral worth connected with its management. Therefore, all the virtue and wisdom that may be brought to bear in the management of a public journal will add nothing to its respectability, if it is restricted in its ability to do wrong and inflict injury. We find, I think, Mr. President, taking a view of the history of the times with regard to the freedom of the press, that the first great move in relation to the subject was made by the patriots of '76. We find that it had then become necessary; the reason and cause of the English law being incompatible with the principles of free government, asserted by our ancestors, consonant as it was with the existence and maintenance of monarchies and aristocracies in countries like England, from which, in some degree, our law on the subject was derived. There it was a matter of political wisdom, if not of necessity, that the press should be shackled, in order that the rulers of the people should not too often exhibit their private or public conduct before the masses whom they were to govern. Having then been held and first declared to be free by our fathers, the press soon obtained a greater latitude. Free discussion was allowed of the conduct of the Legislature and public officers; and in such cases it was determined that the truth might be given in evidence in a prosecution for libel. But, I would ask, who is willing to license the press to discuss private character in all its relations? What, sir: shall I be told, in the case of a man who would stoop from his high station to cast a stain upon female character, to slander a wife, a sister or mother, or a friend in an obscure walk of society; to drag her before the public gaze; to publish to the world every peccadillo or misdeed in her history; or that there is any redress when the vile calumniator can step forward in a court of justice, and justify the wrong he has inflicted upon society: when he can say he is prepared to prove the truth of the allegations? Shall we be told to sue these persons, whose publications are so deleterious to public morals and the peace and good order of society? These very editors may not be be worth a groat; and where then does the "club of the law" end? Where is the redress spoken of by gentlemen? This state of things leads to a further infraction of the laws of society; it leads to murder and assassination. And let me ask what is the public advantage? In what respect does it benefit public morals: in what degree the cause of religion, or public policy? In what manner is the cause of freedom and liberty throughout the world to be promoted by allowing an editor to publish truths, even with regard to the relations of private life? If any great end can be subserved by a license of this kind, in God's name let each man who may choose to set himself up as an editor discuss and scan every private act of our lives. But will any good end be promoted in the slightest degree, by a latitude of this kind? No, Mr. President. It is the mendacity and licentiousness of the press at the present day, which inflicts the most serious injury upon the morals of society. Then is there any thing improper or unjust in a restriction of this kind, which simply prohibits the indulgence in reflecting upon the conduct of persons in the relations of private life? For myself, I can see nothing. By adopting the section as reported by the committee on General Provisions, no injury can result to any one; and no possible good can result from the latitude insisted upon by the gentleman from Harris. And I conceive that neither for my vote nor for the remarks I have made will information be filed against me to terminate in expulsion from my political church.

On motion of Mr. Van Zandt, the Convention adjourned until half past 8 o'clock, to-morrow morning.

Wednesday, July 16, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Clark, from the committee on Education, made the following report:

Committee Room, July 16, 1845.

To the Hon. Thos. J. Rusk,
President of the Convention:

The committee to whom was referred that part of the Constitution which relates to the subject of Education, have had the same under consideration, and ask leave to submit the following report.

(Signed,) EDWARD CLARK,
Chairman.

Art. 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature, in all future periods of this State, to make suitable provisions for the support and maintenance of public schools.

2d. The Legislature shall, as early as practicable, establish free public schools throughout the State, and shall furnish means for their support, by taxation on property; and from and after the year eighteen hundred and fifty, it shall be the duty of the Legislature to set apart one-tenth of the annual revenue of the State, as a perpetual fund—the interest of which, at six per cent. per annum, shall be appropriated to the support of free public schools; and no law shall ever be made directing said fund to any other use.

3d. All public lands which have been heretofore, or which may hereafter be granted for public schools, to the various counties, or other political divisions in this State, shall not be alienated in fee, nor disposed of otherwise than by lease, for a term not exceeding twenty years, in such manner as the Legislature may direct.

Which report was laid on the table one day for consideration.

The special Finance committee to whom was referred a resolution, instructing them to enquire into "the amount of money which can be collected by a reasonable rate of taxation: and what amount will be sufficient to support a State government for the first year," made the following report:

To the Hon. Thos. J. Rusk,
President of the Convention:

The select committee, to whom was referred a resolution instructing them to inquire into "the amount of money which can be collected by a rate of reasonable taxation, and what amount will be sufficient to support a State government for the first year," have had the same under consideration, and have instructed me to report:

That, in the present incomplete condition of our State Constitution from the best data in the possession of the committee, the necessary an nual expenses of the government of the State of Texas, will probably be something like the following estimate:

3 Judges of Supreme Court,	$2,000—	$6,000	
6 District Judges,	1,500	9,000	
6 District Attorneys,	300	1,800	
Contingent Expenses,	500	500	
Annual expense of Judiciary,		$17,300	$17,300
Governor,	$2,000	$2,000	
Secretary of State,	1,000	1,000	
Comptroller,	1,000	1,000	
Treasurer,	1,000	1,000	
Attorney General,	500	500	
Contingent Expenses,	500	500	
Annual expense of Executive Department,		$6,000	$6,000
60 members of the Legislature, at $3 per day,		$10,800	
Mileage,		3,000	
6 Clerks, at $3 per day, each,		1,080	
4 Door-keepers and Sergeant-at-Arms,		720	
Contingent Expenses,		1,200	
Contingent Printing for both Houses,		1,000	
Printing Laws and Journals,		2,500	
2 Chaplains at $3 per day,		360	
Expenses of the Legislative Department,		$20,660	$20,660
Pension to Col. Neal,		$200	
" Joseph Cecil,		300	
" M. J. Garcia,		100	
Amount of Pensions,		$600	$600
Annual expense of the State Government,			$44,560

Your committee have, purposely, omitted to take into account, in this estimate, the expenses of the General Land office. They believe that that office can be made, and the situation of the country imperiously demands that it should be made, to defray its own expenses. In this way, every man would contribute to the support of that office, in proportion to the interest he has in it.

The committee have, also, endeavored to make an estimate of the probable revenue, from weich the expenses of a State government are to be defrayed; and, by comparing the returns of the Secretary of the

Treasury, for the years 1843 and 1844, (the only data in their possession,) they arrive at the following conclusion, as to the probable amount of direct and license taxes, for the ensuing year, at the rates now established by law, viz:

Specific tax,	$19,756 88	
Ad valorem tax,	22,736 64	
Poll "	4,000	
License "	5,000	
	$51,493 52	
From which deduct	4,000	expenses of assessing and collecting,
Balance,	$47,493 52	

The committee would remark, that the specific tax on most articles, on which specific tax is laid, is equal to about one-fifth of one per cent.; and as we will, probably, adopt an article in our Constitution, requiring that taxation shall bear equally on all kinds of property, it will be necessary (or at least proper,) to raise the tax on land, which is now only one-tenth of one per cent., to one-fifth of one per cent., to produce the contemplated equality of taxation. This, from the best calculation we can make, would augment our revenue about eighteen thousand dollars; which, added to $47,492 52, would make an aggregate of sixty-five thousand four hundred and ninety-two dollars fifty-two cents.

Under the operation of the law now in force, the direct tax has proved a very precarious source of revenue—not more than an average of one-half having heretofore been collected; and as Texas, when she becomes a State, must depend entirely on that source of revenue, your committee would suggest the propriety of making some constitutional provision which will ensure a more prompt and efficient collection in future.

J. B. MILLER, Chairman,

500 copiess of said report were ordered to be printed.

Mr. Lewis offered the following resolution:

Resolved, That the following mode of revising, reforming, or amending the Constitution, be referred to the committee on the Bill of Rights and General Provisions:

Mode of revising the Constitution.

When experience shall point out the necessity of amending the Constitution; and when a majority of all the members elected to each House of the General Assembly shall, within the first twenty days of their stated annual session, concur in passing a law, specifying the alterations intended to be made, for taking the sense of the good people of this State, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other returning officers, at the next general election which shall be held for representatives, after the passage of such law, to open a poll for, and make return to the Secretary of State for the time being, of the names of all those entitled to vote for representatives, who have voted for a convention; and, if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for a convention, the General Assembly shall direct that a similar poll shall be opened, and taken, for the next year; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for a convention; the legislature shall, at its next session, call a convention, to consist of as many members as there shall be in the House of Representatives, and no more—to be chosen in the same manner and proportion, at the same places, and at the same time, that representatives are, by citizens entitled to vote for representatives; and to meet within three months after the said election for the purpose of adopting, amending, or changing this constitution: but if it shall appear, by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives, did not vote for a convention, a convention shall not be called.

Which resolution was referred to the committee on General Provisions.

Mr. Forbes offered the following resolution:

Resolved, That the committee on General Provisions of the Constitution, be instructed to inquire into the expediency of prohibiting the passage of any law taking away, or altering, the legal remedy for the collection of debts, which was in force, and in operation, at the time of the creation of the debt; and that the said committee report to the Convention as early as practicable, the result of their inquiry.

Which was read and laid on the table one day for consideration.

Mr. Parker offered the following resolution:

Resolved, That the Convention will go into the election of a printer, to print the journals of the Convention, on the day of inst., at 11 o'clock, A. M.

Which was read and laid on the table one day for consideration.

Mr. *Howard* said that he held in his hand a translation into Spanish, of the ordinance of this body, accepting the proposition of annexation, and the resolution relating to the United States' troops, which he presumed to be correct. At the request of his colleague, Mr. Navarro, he would move to spread them upon the journals. He concurred in the propriety of this course for various considerations, which would at once suggest themselves to the Convention. Gentlemen are aware that foreign interference has taken place on the question of annexation. Every species of exertion will be made to mislead the public mind of the Mexican people upon our frontier; especially in relation to the objects of inviting troops from the United States to take possession of the country. It was, therefore, he thought, important to provide against these efforts by the publication of these resolutions in the Spanish language. He was confident that if the Mexican people were left to themselves, and understood correctly the true bearing of these measures, we should find them with little or no division, in favor of annexation. From what he had seen of the Mexican population in the west, he was satisfied that there was no population in Texas more desirous for annexation. They are tired of the serious vexations to which they have been subjected by the Mexican government. It is therefore important that they should have early and correct information with regard to the precise character and effect of annexation, and more especially with regard to the introduction of troops into that territory. There can be no doubt that the government of Mexico will suppress the resolutions, and spread abroad distorted statements of the facts.

Mr. *Kinney* said that he concurred most fully with the gentleman from Bexar, in his views with regard to the necessity that these resolutions should be spread upon the journals in the Spanish language. Very many will come here to examine the records of the country. And gentlemen are all aware that the largest number of the citizens of the western country, are Mexicans, and unacquainted with the English language. He hoped, in addition to the adoption of the motion of the gentleman from Bexar, that there would be a thousand copies published in the Spanish language, for the information and satisfaction of his constituents among others. He believed, that if the state of affairs were properly understood by the Mexican citizens, not one of them would be found opposed to the project of annexation to the United States. Whereas, if they should see the United States' troops coming among them, without knowing the object, it might create a suspicion that all was not right. He would therefore move that a thousand copies of these resolutions be published and distributed.

Mr. *Brown* said that he apprehended there would scarcely be a single vote against the proposition. He represented a county containing no Mexicans; but inasmuch as many of the Mexican citizens in the west will be taxed for the information of the eastern people, it was but an act of reciprocity that these resolutions should be translated and published for their satisfaction

The ordinance and resolution referred to were ordered to be spread upon the journals, in the Spanish language, and 1,000 copies were ordered to be printed.

On motion of Mr. Wood, Messrs. Darnell, Coney and Armstrong of J. were added to the committee on General Provisions.

The Convention proceeded to the

ORDERS OF THE DAY.

The substitute for the 6th article of the Bill of Rights, offered by the committee of the whole, was taken up.

Mr. Davis moved to strike-out all after "fact."

Mr. Armstrong of J., said he should vote against it. He would be willing to support it, if it retained the words "under the direction of the court." That is the most important feature. If gentlemen want every thing tried by a jury without a court, let them make such a general provision in the proper place.

Mr. Davis then moved to strike out all after the word "cases."

Mr. *Van Zandt* said: I had hoped, Mr. President, that there would have been no necessity of a prolongation of the discussion upon this subject. But as one of the gentlemen (Mr. Moore,) opposed to the provisions recommended in the report of the committee has seen proper to take a wide range, and has introduced here, subjects unconnected and foreign to the true issue before us; as the chairman of that committee and the organ through which the report was made, I deem it my duty to ask the indulgence of the Convention while I make a brief reply to a few of those assertions.

I am glad that the gentleman from Liberty (Mr. Davis,) has made his motion to strike out the remainder of the section. It presents again the original proposition of the gentleman from Harris, which I wish to see presented to this body in all its naked deformity, unclothed and stripped of the disguises with which the somewhat salutary amendment of the gentleman from Bexar has invested it. The question before us is one simply directing the manner of trials for libel, and involves no principle of a direct interference with the liberty of the press. Nor can the cause of liberty itself or free discussions be promoted by the course of debate pursued by the gentleman from Harris. It has been the practice of demagogues in all ages, to attempt to fasten upon either the advocates or opponents of particular measures the odium of names belonging to the history of times past, thinking thereby they may drive from their positions the weak and wavering. The course of the gentleman from Harris has never, on any former occasion, to my knowledge, proved him worthy of such an appellation, and whatever inferences may be legitimately drawn from the course of his remarks on yesterday, I hope in all charity his intentions on that occasion were not such as to entitle him to so unenviable a distinction. But whatever may have been his intentions, his words seemed to indicate a design to cast upon the supporters of the principle contended for by the committee, the charge of advocating the doctrine of Federalism, denouncing their opinions as the offspring of the alien and sedition laws, and as the tenets of a celebrated convention which met in one of the Northern States, which adopted resolutions repugnant to republican principles. If there were any grounds upon which to base these charges, those to whom they are intended to be applied, might well shrink from their positions. But I think I shall not only be able to show their entire falsity, but that if applicable at all, to any one, the reverse of the position is true. The substance of the clause reported by the committee, has been embodied in the constitutions of a large number of States of the Union, and received the sanction of the wisest and ablest of her Statesmen.

I have made a short examination of the facts of this matter. Let us see how they stand, and ascertain where the gentleman's beau ideal of unsullied liberty and republicanism had its origin. In what bill of rights do we find the clause so strenuously contended for him? Do we find it in the bill of rights of Virginia, framed and readopted by the ablest deliberative body which ever assembled in State convention? Do you find it in any of the great western States, save one, or is it to be found in those of the sunny south? No, sir. It is the nursling of Connecticut, the State which gave birth and being to the Hartford convention, and which furnished the strongest advocate of the alien and sedition laws. From thence came the darling bantling of the gentleman from Harris, and which he would palm off upon us as the choicest gem of democracy. In none of the State constitutions then I assert can it now be found, save Connecticut and Missouri. The gentleman says Mississippi, but I deny the fact. The clause referred to, is very similar to the amendment offered by the gentleman from Bexar. I will read it. "In all prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter alleged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the facts." I ask you then, sir, if that is the amendment propos d by the gentleman from Harris? (Here Mr. Moore rose, and read from a constitution of Mississippi, a provision similar to that adopted in the constitution of Texas.) What is the date of that? (Mr. Moore answered, 1817.) Then it proves to be the discarded principle of the people of that State. We find, in framing the new constitution of Mississippi, after the test of fifteen years experience under the old clause, they saw the necessity of change, and consequently, added the amendment made, which, though, covering some of the objections of the original clause is yet imperfect. The gentleman appears to have gathered all his ideas from discarded theories and obsolete books. The States which have adopted the substance of the clause recommended by the committee are Maine, and Pennsylvania. But the gentleman says *it is the antiquated* doctrine of Pennsylvania. It is true that that time honored and peace loving State, in 1790, incorporated it into her constitution, but after forty-eight years experience, in 1838, we find her with all the lights of experience before her adopting the same clause again. But to proceed with the Catalogue, Delaware, Ohio, Illinois, Indiana, Kentucky. But as particular allusion has been made to Kentucky, where has she ever been found wanting, when the institutions of liberty were endangered, or when the tocsin of war was sounded? Was she found by the side of *Connecticut*, denouncing the war of 1812; or were her brave riflemen among the foremost to meet upon the northwestern frontier and the banks of the Mississippi the invading foe? Were her gallant sons who adopted the principle recommended by the committee, then to be denounced as Federalists, and enemies to the freedom of the press? Tennessee has twice adopted a similar provision. The second time in 1835. But as the gentleman wishes to strike those who advocate it from the ranks of democracy, let us see who were the framers of the constitution of Tennessee. Was Andrew Jackson there? Yes, sir! And in the full meridian of his mighty genius. And does the gentleman rise in his place and denounce him as a Federalist in his day? Andrew Jackson a Federalist!! I must attribute the fault of the gentleman to an error of judgment alone, for I have long known his veneration for the departed Hero of the Hermitage. Lousiana, Arkansas, and Alabama have adopted like provisions, and where do you find more genuine republicanism or greater freedom of the press than they illustrate? If, then, the gentleman's argument and assertions prove any thing, it is that he, though born as he asserts, in the region of Franklin, has imbibed Connecticut principles, and if any one deserves the appellation, of Federalist, on account of his views upon this subject, he himself is prominently entitled to it. But as he declares himself to be a true democrat, if he will only abandon a few of his political heresies, I, for one, am not disposed to cast him out of the church.

There is no member of this body, Mr. President, who would go further to establish the *freedom of the press* than myself, *holding at the* same time those who improperly exercise that freedom to a strict accountability. The 5th section which we have just adopted, proves the intention of the committee forever to protect it. If it could be made to appear that any thing contained in the clause under consideration had a tendency to place an improper restraint upon it, I would ask it to be rejected; but I can come to no such conclusion.

A summary of the action of the other States, thus shows that ten States have adopted the rule recommended by the committee; two the proposition supported by the gentleman from Harris, and two that of the gentleman from Bexar. The other twelve, whose constitutions are before me, have adopted substantially the provisions contained in the section already adopted, leaving the common law to act in full force in the trial of libels. Let us then profit by their example and experience, furnishing as they do, abundant testimony of the necessity of establishing the security of the private citizen from oppressive and unnecessary inquisition.

Again: the gentleman from Harris based his argument, in part, upon the adoption of the principle for which he contended, by the framers of the constitution of Texas. But, sir, under what circumstances was that adopted? With cool calmness and deliberation, in the absence of fear or hurry? No, sir. That convention embraced a good share of wisdom and talent, but the result of their action, under the circumstances surrounding them at the time, is entitled to no great degree of consideration here. Daily expecting the Mexican foe, they had no force for their defence. Your small band of patriots was retreating before the enemy; and the convention broke up suddenly, and retired beyond the Brazos.

I would not diminish the liberty of the press: I would have it as free as the winds of heaven; I would put no clog upon it. But let this liberty be employed with discretion. You give every one the right to bear arms for his own defence: but does it follow that he has the right to slay his neighbor in all cases?

The object of all government is the peace and good order of society, and whatever is calculated to stir up strife, to promote quarrels and cause bloodshed, should surely be curbed as much as possible. The gentleman has referred to Mississippi. What has been the result there of this unrestricted liberty of the press? It has resulted perhaps in some good: it has killed off at least half a dozen editors, I speak ironically: but the history of the press in that State may furnish us with an instructive lesson. Human nature is human nature, and ever will be the same. Solomon says: "the words of the tale-bearer are as wounds." Let us take counsel of the wisdom of the past, and while we secure the rights of the private citizen, let us at the same time leave the press free and unshackled.

Mr. *Howard* said, I regret, Mr. President, the necessity of saying something upon this subject, as one of the amendments was offered by me; and I shall do so with all possible brevity. It is easy to indulge in declamation upon liberty, but to understand the principles of liberty, and to know the measures necessary to its security, is a somewhat different matter. Sir, what is the liberty of the press? We have heard a great deal said about it here, but no one has attempted to define it. I will not give you my own crude definition, or the speculation of my own breast; but those of the wisest sages, of the most enlightened jurists and statesmen. The liberty of the press, then, is defined to be the right to publish our sentiments and opinions unrestrictedly, being afterwards responsible for the abuse of that right. That is the liberty of the press, and I say it without the fear of contradiction: gentlemen are not able to find one jurist or statesman who has defined the liberty of the press as the right of publishing without responsibility under all circumstances. And it would be most extraordinary if they could. One of the principle objects of government is to protect the liberty of the person and property. But would a government be perfect, would it answer the ends for which it is created, if it did not protect reputation and character also? Are we to say that reputation is less dear than property? To a high-toned man it is dearer than life itself.

We have heard a good deal of declamation about the antiquated doctrines of the common law, and the tyranny of English decisions in relation to the press. It comes with a very poor grace from Americans. The liberty of the press, like almost all the principles of liberty, is the growth of English culture; it first took root in English soil. What light does history throw upon the subject? When printing was first discovered, it was considered entirely an affair of state, and its regulation was confined to the crown. This jurisdiction in England, in process of time, was placed in the star chamber. There it remained until the revolution, and the long parliament in 1641, in the time of Charles the First, when it was assumed by the parliament itself, which exercised it until the restoration of Charles the Second, soon after which, the censorship was revived by an act of parliament, which continued in force until 1694. But in the mean time, the English mind became aroused upon the subject, and the act was allowed to expire, by its own limitation. Upon that negative basis the freedom of the press rested: and thus it remained, until the passage of the act which gave juries the right to determine the fact and the law, as in other cases. The rights of the press were freely discussed and defined upon the trial of the publisher of Junius, and more recently in the speeches of Erskine, some of which, for variety and purity of principles, for profound thinking and masterly eloquence, are unsurpassed by any thing of the kind since the days of Cicero. And what were the principles established by him? For what principles did *Junius* contend? That every man in the discussion of public affairs, had the right to publish what he should think proper, being afterwards responsible for the abuse of the privilege, This was the doctrine of Junius; this the doctrine of Erskine. Thus stood this right previously to the American revolution. Now what is our own history upon the subject? When the American Union was framed, the English principles upon the subject of libel were the principles of this country. In 1798, that measure occurred which cut so large a figure under the administration of Adams, of punishing editors for their comments upon the conduct of the President, members of Congress, and officers of the government. And here let me remark, by the way, it was not so much the exercise of the power as the odious manner of its exercise, which produced the excitement. Jefferson opposed it, rallying around him what was then called the democratic party. Now, for what principles did Jefferson contend? For the right to publish whatever a man pleases, without any check? Did he say that the liberty of the press excluded the idea of responsibility? I have never seen from the pen of Jefferson the expression of any such sentiment. There has never been an intimation in the whole course of the history of the subject, that a man should have the right to publish what he pleases, without being afterwards responsible. It has, indeed, been constantly contended, that no censorship should be exercised over a man as to what he should publish: but if he should publish what is improper or injurious, it has been unanimously admitted that he should be held responsible. Thus far the principles of English law. American principles go a step further: and now we come to the doctrine of Jefferson and democracy: for though

I must say I disapprove of this talk about democracy here in reference to parties in the United States. I use it as a general and not as a party term. "In all prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, the truth thereof may be given in evidence." That is the principle for which Mr. Jefferson contended when he went into power; that in the investigation of public affairs and the conduct of public men, the press should have the right to publish what it pleases, with no other limit than that of the truth.

But with regard to private life, a different principle has been maintained by every American statesman of any influence. To that extent I will go. I would propose to amend, by adding, after the word "evidence," the following: "but in other cases the truth shall not avail as a defence, unless published from correct motives and for purposes of public good." What is the only difference here? One party contends that in private affairs, the truth should be published at all times, without regard to public good or or convenience, and that if the truth is made out, it should be an ample protection. Now I deny that there is any such principle known to the law. I maintain that it would be destruction of the liberty of the press itself: for liberty means restraint; the protection of the right, and the restraint of the wrong. Now is it right under all circumstances, that the affairs of private life should be published to the world? I have only to refer to the present condition of the Ameican and English press, to show the propriety of the law as it now stands. Look, for instance, at the city of New York. We all know what a species of thraldom one single press has attained over that city and State, by ferreting out the most secret matters, and publishing them to the world. As a principle is better illustrated by examples than in any other way, I will mention a fact. A few weeks ago, I took up a New York paper, in which a letter writer gave an account of a party at which certain young ladies, designated by their initials, were present. It was said that the Misses so and so were at the party: that they were rich, graceful, accomplished and interesting: but, concludes the letter writer, it would be well enough, perhaps, for these young ladies, who hold their heads so high, to remember their origin: their mother was Mrs. so and so, who made a slip with count so and so, when he was in this country; she afterwards married the father of these young ladies, and has led a virtuous life ever since; but such is their true history.—Now I ask if it was proper to make these facts public? In the first place, was it just to the lady who committed the fault: if by a life of virtue she had since retrieved it, why needlessly drag her before the public gaze, without any possibility of subserving the public good, or conducing to public benefit? But if just to her as a punishment, is it right that the innocent members of her family should thus needlessly be held up to public scorn and ridicule, and their fortunes in life perhaps forever blasted, by an impudent caterer for the love of slander inherent in the human breast? I look upon such a person as an assassin in the dark, too vile to move in the face of day. Discuss public affairs as fully as you will; handle public men with what severity you choose; subject them to the keenest scrutiny: but let the liberty stop there. If an individual is guilty of a great outrage, it may be necessary and beneficial to the public to publish the facts: but in such cases ample protection is afforded. It is an old adage, and a true one, "the truth may not be spoken at all times:" there are many things which need not be told. I say, then, that the government which fails to protect character from unjust and unprovoked aspersion, is as imperfect as one that fails to protect life. The one is as dear as the other, and ought as much to be placed under the protecting shadow of the law. By nothing that we can do here, could we hope to prevent the licentiousness of the press to any great extent. But I am not willing, in the fundamental law of the land, to offer a reward to licentiousness. I would at least inculcate a moral; whether it can be practically enforced or not, is no business of ours. The danger to the people and the press itself, is from its license; there is no adequate remedy, but this is the only one in our power. It is not my purpose to declaim here about the glorious principles of the press: God knows it has privileges enough. And many a man, while declaiming in the name of democracy, has stabbed liberty to the heart. Who were louder in eulogizing liberty than Robespierre and Marat; yet who did more to sap its very foundation in Europe?

Let us understand the import of the principles which we are adopting. The article as it stands in the report, leaves it to the legislature to say whether or not it shall be competent to permit the truth to be given in evidence, in case of publications relating to private affairs. I propose to control the legislature in that respect. I think some restraint would be salutary.

Mr. Davis withdrew his motion

The question was put on concurrence with the amendment proposed by the committee of the whole, and the amendment was rejected.

The amendment of the committe to the 12th article, after the word "limb" insert "nor shall a person be again put upon trial for the same offence, after verdict of not guilty," was read and adopted.

The question was taken to strike out the 16th section, as amended by the committee, and lost.

The amendment of the committee to strike out the 18th article, was adopted by the Convention.

The amendment of the committee to strike out the word "proper" in the fourth line of the 20th article, was adopted.

In 21st article, the proposition of the committee to strike out the words "General Assembly," wherever it occurs, and insert "Legislature," was adopted

Mr. Howard offered the following amendment to the 6th article, to come in after the word "evidence:"

"But in other cases, the truth shall not avail as a defence, unless published from correct motives, and for purposes of public good."

Mr. Mayfield offered as an amendment to the amendment of Mr. Howard, the following:

"And in all publications injurious to female reputation, the facts thereof shall not be enquired into; but shall be deemed false and libellous;" both of which were adopted by the Convention, by the ayes and noes as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Brown, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Love, Lusk, Mayfield, M'Neill, Miller, Navarro, Runnels, Smyth, Standefer, Tarrant, Van Zandt, Wood, Wright and Young—33.

Noes—Messrs. Armstrong of J., Bache, Brashear, Burroughs, Caldwell, Everts, Forbes, Gage, Hemphill, Henderson, Howard, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Moore, Parker, Power, Rains, Scott and White—23.

Mr. Forbes offered the following amendment to the 6th article; insert after the word "capacity," in the third line, the words "or seeking and canvassing for public office;" which was rejected.

Mr. Brown moved to reconsider the vote on the adoption of Mr. Mayfield's amendment to the 6th article; which motion was lost.

Mr. Lewis offered the following substitute to the substitute of the 6th article:

"In prosecutions for the publishing of papers investigating the official conduct of officers, or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts."

Mr. Mayfieled offered the 19th section of the Tennessee Constitution, as a substitute to Mr. Lewis' substitute, which read as follows:

"That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch or office of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man; and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty; but, in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases;" which was adopted as a substitute for the substitute.

Mr. Cunningham moved to adjourn until 4 o'clock, P. M. Lost.

Mr. Evans offered the following, as a substitute to Mr. Mayfield's substitute:

"No citizen shall ever be punished for speaking, writing, printing, publishing, or circulating his opinions, on any subject, either by civil suit or indictment; unless malice be proven or implied:" which was rejected.

Mr. Gage called for the previous question, which was carried—the question being on the 6th article as amended.

Mr. Moore moved a reconsideration on the previous question; which motion was lost.

The 6th article, as amended, was then adopted by the Convention.

Mr. Mayfield offered the following amendment to the 9th article, 6th line: after the word "prohibit," insert the word "bail;" and after word "found," in same line, insert the word "upon;" which was adopted.

Mr. Anderson moved that the Convention adjourn until 4 o'clock, P. M. Lost.

Mr. Armstrong of J., offered the following amendment to the 13th article: after the word "made," in second line, strike out all the article, and insert "and no person's property shall be taken or applied to public use. without adequate compensation being made, unless by the consent of such person;" which was under consideration, when, on motion of Mr. Van Zandt, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Mr. Armstrong's amendment to the 13th article being under consideration.

Mr. *Armstrong* of Jefferson said, he thought the necessity apparent of changing the phraseology, if not of striking out: so as not to leave points undetermined which it is intended to establish. The terms used in the report were liable to dispute at the best.

Mr. *Hemphill* said he should be opposed to that part of the amendment which says that compensation shall be *first* made before the property is taken. It does away with the whole benefit of the provision.—It is very well known, that for any purpose of public policy, or utility, it is necessary that private property should be taken without any compensation at the time, leaving it to the honesty and justice of the government to make it afterwards. All persons at all acquainted with military operations in this country up to this time, well know the necessity that frequently exists of making use of private property, cattle, horses, powder and lead, and any other articles necessary to the success of the forces in the field. If you, for instance, Mr. President, (he continued.) had a thousand men under your command upon the Rio Grande frontier, in a state of starvation, it would be impossible, under this provision, to appropriate cattle, unless able to pay for them at the moment. Or, if in command of this hill, at this time expecting an attack from the enemy, it would be impossible for you to destroy the houses in the neighborhood, if you wished to do so for the purpose of preventing the enemy from making a lodgement, until you had paid the owners of the property. It might be supposed there would be no difficulty in destroying such property. But if there were some danger in the attempt, and you were to confide the duty to some Colonel or General, it is possible he might find the command unconstitutional.

This provision is novel in itself. The terms employed in the Constitution of the United States and others are these: "nor shall private property be taken for the public use without just compensation."

I agree with the gentleman from Jefferson in the propriety of his amendment, with the exception of the part I have referred to, which I would suggest should be stricken out.

Mr. Armstrong accepted the amendment.

Mr. Anderson proposed an amendment to the amendment, to insert "or a sufficient indemnity given." Rejected; and Mr. Armstrong's amendment adopted.

Mr Caldwell moved to strike out "unless by the consent of such person." The Convention refused to strike out.

Mr. Evans offered the following, as a substitute for the 2d article: "all citizens have equal rights: and no man, or class of men, is entitled to exclusive, separate emoluments or privileges." Rejected.

Mr. Evans moved to add an entire new section between the 14th and 15th, as follows: "no person shall ever be held liable for any promise to answer for the debt, default, or miscarriage of another." Rejected.

He then proposed, as a substitute for the 20th section, the following, to wit: "the right of citizens to assemble in primary meetings and instruct those invested with the powers of government tending their common good, shall remain inviolate." Rejected.

Mr. Scott moved to strike out the 14th section, for the purpose of inserting as a substitute: "the person of a debtor, when there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law." He said that if he understood the import of the section as it stands, no man, however fraudulent, can be held to bail, even; but may go off before the eyes of his creditors. Many such persons, if compelled to give in a schedule upon oath, might disgorge, and the honest creditor would get his debt.

The Convention refused to strike out.

Mr. Scott moved to amend, by adding "in consequence of inability to pay."

Mr. Mayfield proposed a substitute for the amendment, as follows: "except in cases of public officers, executors, administrators, or guardians, who shall be found in default upon a settlement of their account as such."

Mr. *Henderson* said he was in favor of both the amendment and the substitute. He was as much opposed as any member here to imprisonment for debt. If neither is adopted, fraudulent debtors, if they choose may conceal their money, or place it in their pockets, and although they may have thousands, the honest creditor is without remedy. But, if the amendment of the gentleman from Montgomery (Mr. Scott), is adopted, it will have this effect: If a man can show his inability to pay, as he can do if honest, then he cannot be imprisoned; and I would ask if there is a man in this house who would not wish to see that the law?

Is there any man who would wish on the one hand to protect him who would fraudulently conceal his property against his honest creditors, or, on the other, to imprison the innocent but unfortunate man who is unable to pay? Again, he who defrauds the public treasury, ought certainly to find no protection in this Constitution, and he who enters upon a trust should be forced to discharge it with fidelity.

Where is the hardship or injustice of forcing him who has the means to pay to perform his contract?

If the amendments of the gentleman from Fayette and Montgomery could be placed in such a shape as to embrace the two objects he had in view, he would cheerfully sustain both.

Mr. *Mayfield* said, if he could, consistently, with the views he entirtained upon the subject, adopt the suggestion of the gentleman from San Augustine, it would afford him great pleasure to do so. But he apprehended from the tenor of his remarks that the gentleman and himself differed in opinion as to the ends to be attained by the resolution. He himself entertained the doctrine, and maintained the opinion, that the experience of the present age has clearly decided the impolicy and barbarity of imprisonment for debt. It was likewise his opinion that the experience of the present age has manifested very clearly to the world the great errors as well as evils and the injury to the body politic, arising from the general extension of what might be termed the credit system. Neither on this occasion nor any other was he disposed to disguise his sentiments, or to seek indirectly what he would not directly strike at. He believed that public policy demands the restriction of this universal system of public credit. He believed that the enlightened experience of the times has shown, beyond a question, the great evils arising from this system to individuals in their private relations as well as to communities and political bodies. At all events, the question is scarcely any longer mooted. But the humanity of the age demands that man should not be imprisoned for debt; that this ignominious punishment should attach only to crimes, and not to a mere moral dereliction. It is insisted upon, however, that if the acts of the debtor are fraudulent, if he pockets the money due, and runs away, the law or its officers should reach him. Because, forsooth, he has violated a private trust, or been guilty of a simple breach of confidence betwixt man and man, he is to be immured in prison, and all the consequences of crime are to attach to him and his family. He (Mr. Mayfield,) should still maintain his present opinion upon the subject, until the laws should declare such acts to be absolutely criminal in themselves. The age has said that the punishment due to crimes shall not be inflicted for acts like these, until legislation shall have given them that designation. It is not necessary for the order of society, or the organization of government, that these trusts should exist betwixt man and man. These evils are only induced by a system which he apprehended to be erroneous in itself, and entirely unnecessary in a correct political organization of society. But as regards the class which he sought to exempt from the benefits of the section, they are a class which public policy calls into the public service; a class which no human ingenuity has as yet devised the means of dispencing with: because public officers whatever their corruptions or malfeasance, are absolutely necessary to the due execution of the laws and administration of the government. There must be such officers vested with certain given and defined powers. We are likewise compelled, by the very organization of government, to have men upon whom shall be imposed certain fiduciary trusts, for the performance of which they do not become directly amenable to the contracting party with whom they are not in immediate relation, as the man to whom you entrust your pocket-book or money, who may violate your confidence, and run off. But the law places them there: public policy places them there. And, inasmuch as the contracting party has nothing to do with placing them in the position they occupy, public policy should at all times hold them to a rigid and exact accountability. So far as executors, administrators and guardians are concerned, those whom they may have the power to defraud, have had no voice in their appointment. As to public officers, it may be said they are not in the same position. But public policy and convenience demands their creation, and they are under the highest obligation to administer that which comes into their hands in good faith, honestly and justly: in defalcation of which, let the heaviest penalties of the law fall upon them.

Mr. *Henderson* said that he fully agreed with the gentleman from Fayette, so far as to the necessity of incorporating his own propositions. But unless you add, also, the clause proposed by the gentleman from Montgomery, the section would operate to the disadvantage of the very persons the gentleman wishes to protect. If, in case of a father's death, a claim falls into the hands of the heirs, perhaps minors or the widow, why not punish the fraudulent debtor by enforcing the law as in other cases? He could not see the distinction. He could not see any evil which might result from it, except, perhaps in some degree, that of encouraging the credit system. Well. it seemed to him perfectly useless on the part of this Convention to make a single effort to destroy that by any act of this body. It may be well for the Legislature, from time to time, to throw restrictions about it, or to take a course in future to discourage the extension of credit.

He would not propose to give any judge in Texas, the authority to imprison the man who is really unable to pay. But he thought there was no principle of justice which demanded the protection of the fraudulent debtor who conceals his property from his creditors.

Mr. *Mayfield* replied, that the practical operation of the amendment as offered will be simply this: that no man will be imprisoned except in the cases enumerated. If, however, you adopt the amendment of the gentleman from Montgomery, its effect and operation will be this: A credits B. At the time of extending that credit, it is or ought to be based upon the honesty or integrity of B alone. That should be the principle upon which all credit, if extended at all, should be based; upon the confidence which the seller has in the honesty and integrity of the buyer, that he will apply the proceeds of his labor to the payment of his just debts. But if this provision is inserted, A credits B, not on account of his integrity or character for honesty, not for the good name he may bear in the community in which he lives: but upon the faith that he will be able to reach his proprrty at the maturity of the debt, however dissolute or extravagant he may be, B fails to meet his engagement promptly. He is pressed by A for the payment, and becomes the fraudulent debtor described by gentlemen. Inasmuch as he does not promptly meet the payment of the debt, in the contraction of which the creditor did not trust to his integrity of character, but to the chances of the law to collect it, then a hue and cry is raised against him as a knave. If he secures or transfers his property for the purpose of evading the payment of his just debts; this man who has originally obtained credit upon false principles, incurs the greatest rigor of the law. However poor his wife and children may be, and depending upon him for their daily bread, yet if he merely transfers a cow or a pig, he subjects himself to incarceration: he is exclaimed against as a fraudulent debtor. Strike from your statute book any license of this kind, and you will place credit on a just basis, and there will be no necessity for a man to be deprived of liberty, and his family starved in consequence of inability to pay. It matters not whether the allegation of fraud be true or false, the operation is the same for the time being.

Mr. *Lipscomb* said, (in substance,) that any creditor upon affidavit, could allege fraud, and the consequence would be the arrest and imprisonment of the debtor, until the matter should be investigated. He trusted the Legislature would always be ready to pass the laws for punishing fraud, but not for punishing misfortune. He had no disposition to put it in the power of the creditor to wreak his vengeance upon an unfortunate debtor, by putting him in prison until an investigation should be had. He had no wish to be legislating here for the benefit of the creditor alone; believing, as he did, that nine times out of ten, the creditor was more in fault than the debtor himself. He agreed with the gentleman from Fayette, that credit should not be based upon any ostensible property, but upon capacity for himself and integrity of character. In an investigation had some time since before the House of Commons in England, commercial men of the first standing invariably stated that credit may be given not upon property, but upon capacity and integrity; as a man's visible property is so easily removed, that no commercial man would give credit upon that basis.

The substitute was adopted.

Mr. Scott moved to amend the substitute, by inserting, after "guardian," "and all other trustees" Lost.

The question then recurred, on the adoption of the substitute as the 14th article of the Bill of Rights, which was carried in the negative, by the ayes and noes, viz:

Ayes—Messrs Anderson, Baylor, Caldwell, Cunningham, Cuney, Davis, Forbes, Hogg, Horton, Howard, Hunter, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Mayfield, McGowan, Navarro, Runnels, Standifer, Tarrant, White, Wright and Young—25

Noes—Messrs. President Rusk, Armstrong of J., Armstrong of R., Bache, Brashear, Burroughs, Clark, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Holland, Irion, Love, Lumpkin, Lusk. Lipscomb, M'Neill, Miller, Moore, Parker, Power, Rains, Scott, Smyth, Van Zandt and Wood—30

Mr. Hemphill offered the following amendment to the 8th section, viz: strike out all to the word "the," in 2d line, and insert, in lieu, "in all criminal prosecutions." Add, at the end of the article, the following: "no person shall be holden to answer for any criminal charge, but on indictment or information—except in cases arising in the land or naval forces—or offences against the laws regulating the militia;" which was adopted.

On motion of Mr. Jewett, the Bill of Rights was ordered to lay on the table; and the secretary instructed to have a correct copy of the same, with the amendments, made out.

After several motions to adjourn for a longer time, the Convention adjourned until to-morrow morning, half past 8 o'clock.

Thursday, July 17th, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Gage, the resolution to establish a Land Office in Eastern Texas was taken up.

Propositions were made to establish Land Offices at several different points, all of which, together with the original resolution was, on motion of Mr. Forbes, referred to the committee on the State of the Nation.

Mr. Wright introduced the following resolution:

Resolved, That the committee on General Provisions be instructed to enquire into the expediency of establishing judicial counties, which was read and laid on the table one day for consideration.

Mr. Rusk offered the following resolution:

Resolved, That the committee on General Provisions of the Constitution, be instructed to inquire into the expediency and propriety of inserting the following article among the General Provisions, to wit:

All laws and parts of laws which are now in force in Texas, and which are not inconsistent with this Constitution, or the Constitution of the United States, shall continue in force until they may be repealed, altered or amended by the legislature; and no rights which are vested shall be divested, nor shall any rights or actions which have been divested by the Constitution and laws of the Republic of Texas, be revested, or in any way revived or reinstated by this Constitution, but the same shall remain and continue in the same situation as they would have done under the laws and Constitution of the Republic of Texas, before the adoption of this Constitution; which was read, and,

On motion of Mr. Van Zandt, the rule requiring it to lay on the table one day for consideration was suspended, and the resolution adopted.

Mr. Hogg offered the following resolution:

Resolved, That the Legislative Committee be requested to take into consideration the apportionment of representation, and the formation of Senatorial districts, also that the document herewith submitted, be taken under consideration, marked (A) fixing the Senatorial ratio at 1,000 voters, and document marked (B) fixing the Representative ratio at 400 voters, and report to this Convention the apportionment which they may deem the most practicable; which was read and laid on the table one day for consideration,

On motion of Mr. Love, Mr, Runnels was added to the committee on General Provisions.

Mr. Love also moved that the President of the Convention be requested to sit on said committee, which motion was adopted.

Mr. Jones offered the following resolution:

Resolved, That until the first enumeration is made, the counties lying between the Sabine, Red River and the Trinity River, (including those crossing the Trinity.) shall be entitled to 13 members in the House, and 6 in the Senate.

All counties lying between the Trinity and Colorado Rivers, (including Galveston, and excluding the counties crossing the Colorado,) shall be entitled to 11 members in the House and 5 in the Senate.

All counties lying west of the Colorado, including those crossing said river, shall be entitled to 7 members in the House and 4 in the Senate; which resolution was laid on the table one day for consideration.

Mr. Young offered the following resolution:

Resolved, That the committee on the Legislative Department be instructed to enquire into the expediency of creating new counties, and report the same to the Convention; upon which the rule was suspended, requiring the resolution to lay on the table one day, and,

On motion of Mr. Young it was adopted.

On motion of Mr. Tarrant, the resolution of Saturday last, giving to John G. Chambers of Bowie county, Jefferson W. Oliver of the county of Sabine, and Memucan Hunt of the county of Galveston, mileage at the same rate as other delegates of this body, was taken up.

At the request of Gen. Hunt, Mr. Bache withdrew his name as a claimant.

Mr. Van Zandt moved to recommit the resolution to the committee on the State of the Nation.

Mr. Tarrant said he was opposed to any reference: but if it was to be referred, he should prefer a select committee. The resolution stands on its own merits: it embraces only an act of sheer justice to the people of Bowie county and to Dr. Chambers, who was necessarily compelled to incur these expenses. Under the circumstances, he was called upon by every consideration as a patriot and a republican to attend and claim his seat. He trusted the proposed reference would not be made.

Mr. Van Zandt withdrew his motion; and the resolution was adopted.

Mr. Rusk offered the following resolution:

Resolved, That Horace Burnham be, and he is hereby declared to be entitled to the same pay for mileage to and from the city of Austin, as the members of this Convention. Adopted.

Mr. Evans assigned his reasons for voting against the resolution inviting the United States' troops within the territory of Texas, which,

On motion of Mr. Rusk, were ordered to be entered on the journals, and are as follows:

PROTEST OF MR. EVANS.

The undersigned, impelled by an imperative sense of duty, has, with extreme reluctance cast his vote in opposition to the passage of a resolution, requesting the government of the United States to introduce the forces of the United States into Texas, and desires to lay his reasons therefor before the Convention.

The resolution above referred to, was, in the opinion of the undersigned, an unnecessary assumption of power on the part of the Convention, as it appears from the various letters which have been submitted to its consideration—that the objects contemplated by the resolution have been fully accomplished without the intervention of any act by the Convention, three thousand United States troops being then on their march to occupy the exposed portions of the frontiers of Texas, Mr. Donelson, in his letter to the President of the Convention, acknowledging the receipt of the Ordinance, giving the assent of the people of Texas to its annexation to the Untied States, uses the following language: "From the date of this Ordinance, Texas will have acquired a right to the protection of the United States, and the undersigned is happy to inform you that the President of the United States, "*has taken the steps to afford this protection in the most efficient manner, against Mexican and Indian invasion.*"

The undersigned has said, that in his opinion, the resolution was an assumption of power. He has been led to this conclusion from the belief that it required the ratification of the people of Texas to an act of the Convention, in which the public interest is involved, to give it force.—Texas is yet an independent sovereignty, and the action of this Convention must be ratified by the people of Texas and the government of the United States, before that sovereignty can be merged in that of the Union. Until these prerequisites are fully obtained, the Constitution of *independent* Texas is still in force, and binding upon us as citizens, owing allegiance to the Republic, its Constitution and laws. He would not be understood to urge, that the Convention is bound by the Constitution in their enactments, only so far as relates to those things which are not to be submitted to the people; thus far, the individual members are bound to obey its high behests, and act within its prescribed limits. They were deputised by the people of Texas, to draft for *their* consideration and approval, an Ordinance accepting the terms of annexation, and the plan of a State Constitution: here their authority ceases, and when they travel beyond, their delegated powers are at an end, and their acts are but acts of private citizens owing allegiance to the Republic, and sworn to support its Constitution.

The resolution was unnecessary, because the proper department of the government had already taken all steps necessary to secure the desired object. The only department of the government authorized to invite, or even *assent* to the introduction of foreign troops within the territory of Texas, is then authorised to form treaties; by this branch of the government, the invitation has been extended as will be seen by the joint resolution of the last Congress for this purpose, approved by the President of the Republic.

The joint action of both Houses of Congress, and sanction of the President, necessarily includes all parties connected with the treaty making power, and they alone should be held responsible for any ill which might ensue. The Convention should never have thrust itself by an unnecessary and an unauthorized act, between them and a just responsibility, should evil consequences arise out of the invitation.

There are yet existing contingencies which may defeat the annexation of Texas to the United States. The dearest, longest and most cherished hope of the people of Texas, may never be fully realized. The Convention must be apprised that there are many delicate subjects which *must* be enquired into, and acted upon, which may change the tide of popular feeling, even in Texas, upon this great measure. It has been proclaimed upon the floor of this hall, that some action was demanded by the people upon the land titles of the country; all must be aware that this is a subject which strikes a sensitive chord in the public mind, that thrills with painful intensity, from one end of the Republic to the other, and any error here, might rouse a feeling of alarm in the Republic, which, like "Banquo's ghost," will not "down," but may in the end prove fatal to annexation.

Are there no fears to be entertained as to what will be the "final action" of the United States? Do not the terms of the resolution itself involve a proposition which *may* be construed into an interference with the question of boundary? May not some clause be inserted into the body of this Constitution now being framed, whether from haste, passion or misconception, which may cause its rejection when presented to the U. States for its acceptance? If such should be the result of the labors of the Convention, the attitude of Texas, left as she would be to her own resources, with a large body of foreign troops within her limits, by her own invitation, would be truly an unenviable one.

The undersigned, having thus given his reasons for his vote, desires they may be spread upon the journals.

(Signed,) L. D. EVANS.

On motion of Mr. Young, the report of the committee on the Executive Department was taken up, and

On motion of Mr. Van Zandt, the Convention went into committee of the whole on the said report: Mr. Darnell in the chair.

In section 2d, Mr. Bache moved to strike out the words, "qualified electors," and insert citizens qualified to vote for Representatives," to show what branch of qualified electors is meant: there are qualified electors for militia officers under twenty-one years of age. Rejected by the Convention.

Mr. President Rusk moved to strike out "General Assembly," and insert "Legislature," throughout the report. Adopted.

Several amendments were suggested and adopted by the Convention in the 3d section.

In the 4th section, (term of office of the Governor,) Mr. *Runnels* moved to amend by striking out "four" and inserting "two." He believed that two years was ample time.

Mr. *Lewis* said he would explain the reasons which had induced him as a member of the committee to advise and propose the election of the Governor for four years. It was the general understanding, he believed, that the majority of members here were in favor of biennial sessions for the Legislature. If the Governor then is elected for two years only, he will have the opportunity of presiding over only one session: and that term of service is too brief, he thought to enable him to accomplish anything at all. It is insisted by many that the duties of Governor are in a manner unimportant; that he could have no policy to carry out, no measures to accomplish, for which a protracted administration would be desirable. He thought differently. A State has its policy as well as a nation; and to enable a chief magistrate to accomplish anything, he should have a longer term of service than one term of the Legislature. In this case, he comes into office: he presides over one session, without any previous influence over the policy of the country, and he goes out without doing anything, without any impress of character upon his administration. And unless his term of service is lengthened, you had perhaps as well have no Executive at all. With biennial sessions, four years for the Governor, in his opinion was short enough. If the sessions were to be annual, he would be in favor of two years.

Mr. *Runnels* said that he differed very essentially from the gentleman from Montgomery. That gentleman advocates the long term principle for Governor, on the ground that it is necessary to enable that functionary to carry out, and consummate his own particular policy. The government will be divided into three distinct departments; Legislative, Executive, and the Judiciary. And he held that it would not be proper nor in conformity with the republican institutions of the country, that the Executive should exercise an influence over Legislative action. The Legislature is elected directly by the people to carry out their views of policy, to execut their will, and sustain their interests. And when you elect a Governor, is it a Dictator, for the purpose of thwarting their wishes, and throwing obstacles in the way of the legislation of the country? Or is it simply for the purpose of discharging the duties assigned to him, and seeing the laws faithfully executed after they are enacted? Is it for the purpose of dictating to the Legislature what laws they shall, or shall not pass? I deny (contintinued Mr. Runnels,) that he should influence the action of the Legislature in any manner whatever. It is his duty, it is true, to offer such suggestions as he may think conducive to the welfare of his country: beyond this he cannot, and should not go. For himself, he had seen too much of dictatorial power, in this country perhaps as well as others.

Mr. *Lewis* said he thought the gentleman had misunderstood him. In no part of his remarks had he expressed a wish to invest the Governor with dictatorial power.

Mr. *Runnels* said he did not attribute it to him. But it was an inference drawn from the position he assumed. The gentleman did remark that he believed the Governor should have a longer term for the purpose of carrying out his individual views.

Mr. *Lewis* rejoined, that neither could it be inferred from anything he had said that he wished to give the Governor dictatorial power. He had remarked that the Governor should have the power of carrying into effect the measures to which he was known to be favorable when elected to the chief magistracy. What are the duties imposed upon him by this Constitution? "He shall from time to time give to the General Assembly information of the state of the government, and recommend to their consideration, such measures as he may deem expedient." What is he to recommend, and how, and to whom? Directly to the people? No, sir. It is through another medium that he is to make his communications to the country: through that of the Legislature. It is to that body that he is to recommend such measures as he may think when carried out will redound to the advantage and benefit of the country. It is an obligation imposed upon that officer by the Constitution, and he wished to give him an opportunity of carrying into effect the measures he may think proper to recommend. Why impose upon him duties the object of which cannot be attained unless you give him also the necessary time? In the canvass preceding his election, he has published his views in relation to all the great measures of public policy: he has submitted them to the people, and they elect him because he advocates this or that measure, and not simply from personal considerations. When he makes a recommendation, it is as Governor, elected by the people to represent the people in relation to their State interests: and it is because he thinks the public good would be promoted by acting upon it. Was this, then, proposing to give him dictatorial power? By no means. He only wished to give him an opportunity, by co-operating with the Legislature of the country, to accomplish such measures as he knows to be desirable to the people. It is through this medium that New York has accomplished her great work there: it is through this medium that Kentucky has carried out her system of internal improvements. De Witt Clinton had to contend against the most strenuous opposition on the part of the influential men of his State: yet, elected by the people, and sustained by the people, he completed the great work which he had undertaken. Did he assume, or did the people of that State invest him with dictatorial powers? No, sir. Here were two distinct lines of policy placed before the country. De Witt Clinton was in favor of that, to which most of the prominent men in the country were opposed. If he could have presided but for one session, could he have accomplished anything? Certainly not. And other gentlemen may aspire to the governmental chair who entertain different views of the policy of the country. Now is it not proper when the people elect a man whose views are in accordance with theirs, that he shall have an opportunity to carry them into effect? And can he do so in one session? He thought every gentleman would agree with him that little or nothing could be accomplished in that time.

Mr Brown said: He thought it better for the Governor to hold his office for four years than two, if, as suggested by gentlemen, the sessions of the Legislature should be but once in two years. The principles of our government rest upon the sovereignty of the people and the responsibility of their rulers. And if the Governor goes into office, recommends such measures as he thinks necessary to the welfare of the State, and retires before their final accomplishment, there is no responsibility at all. The Governor who follows is not responsible for the policy of his predecessor; and the former who had no opportunity to carry it out, is certainly not responsible. And he conceived his responsibility at last to be totally taken away by short periods of election. For this reason, if for no other, if the term of the Legislature should be made bi-ennel, he thought that officer should be appointed to preside for at least two terms. There are two sorts of measures operating in the policy of a State; one of those which stand by themselves, independent of all others; another, and much the more numerous, of these which are mere links in a chain of measures, a series of measures connectedly operating upon the people. Society is more affected by these than by any others. It is necessary that the Governor should be a sufficient time in office to secure stability to the government and consistency to the measures adopted. And he believed it unnecessary to distrust the person by the frequent recurrence of elections.

Mr. Runnels said: With regard to the necessity of giving the Governor a long term of service to enable him to see such measures consummated as he may have recommended, let us suppose that those measures are unpopular and disadvantageous to the people, should they not have an opportunity to put a stop to them by the election of another? And again: is it not reasonable to suppose that if they are approved by the people they would re-elect him with the object of seeing them consummated? In one part of the Constitution it is provided that the

Governor shall not be eligible for more than four years out of eight. Now, if he is elected for two years, and his administration should be very popular with the people, and they desire its continuance, believing it fraught with much good and importance to their interest, could they not re-elect him? If his policy is good, they will support and re-elect him; if bad, they will choose some other person, in order that measures may not be maintained and carried out which they consider injurious.

Mr. Davis said: as he had been chairman of the committee he would state the term of four years did not entirely meet his approbation, although in accordance with the views of the majority of the committee, he should vote for the amendment.§

The amendment was rejected.

Mr. Lewis proposed to add, "and shall have resided in the same four years immediately previous to his election." Adopted.

Mr. President *Rusk* moved to strike out "but shall not be eligible for more than four years in any term of eight years." Rejected.

Mr. *Anderson* moved to add "regular" before "time of his installation," to provide for contested elections; a succession of which, without such an amendment, might in time throw it out of the power of the Legislature to act. Amendment adopted.

Mr. *Scott* moved to strike out the word "native,' with a view to test the sense of the Convention.

Mr. *Davis* stated that it was the intention of the committee that every citizen of Texas, now, from what country soever he might be, should be entitled to the privileges of all other citizens, and should be eligible to any office in the gift of the people. They entertained, the opinion, however, that the Governor should be taken from among the native born citizens of the United States. Such was still his opinion. He was willing that all those here at the adoption of the Constitution should enjoy any other office, but this one ought to be entrusted to none but those reared up under all the institutions of the country.

Mr. *Baylor* said: It is with great reluctance, Mr. chairman, that I intrude at any time any remarks of mine upon the Convention. But it seems to me to be my duty on this occasion to call the attention of the House to one part of the Constitution of the United States.

"Art. IV. §II. 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Now, I would barely suggest for the consideration of this Committee, if we retain the word "native" in the section in question, and which it is proposed to strike out by the gentleman from Montgomery, whether we may not be retaining an expression which may bring this clause into collision with the section referred to in the Constitution of the U. States. Suppose, a foreigner has by a compliance with all the provisions of the acts of Congress relating to naturalization, become under such acts, a citizen of the United States. We know that the General Government has the right to pass laws of naturalization. If a foreigner then comes into the United States, and complies with the provisions prescribed in those laws, he is then entitled to all the immunities rights and privileges, of any other citizen of the United States, excepting only, in the case of certain disqualifications found in the Constitution itself. He cannot, for example, be President of the United States; and there may be some other instances of exclusion. But in every particular, unless excluded by the Constitution itself, he is entitled to all the rights, privileges, and immunities of every other citizen of the country. Then, sir, we will suppose for a moment that a foreigner who has been naturalized under the acts of Congress referred to, shall emigrate to Texas. If we deny him the privilege of being Governor, shall we not place him in an inequality so far as that office is concerned, with other citizens of the United States, and by retaining this peculiar expression in our Constitution, may we not come into conflict with the provision which I have heard? For, sir, the native citizen who should emigrate here, after remaining the usual period, and having arrived at the proper age, would be entitled, if he should receive the suffrages of his fellow citizens, to be Governor of this State. I merely throw out the suggestion, because I am extremely solicitous to do nothing which even, by implication, could come into collision with any provision in the Constitution of the United States. So far as the General Government is concerned, it was perhaps wise and proper that foreigners should be excluded from becoming President of the United States. It was supposed that none but a native ought to be elevated to so dignified and important a station. It was thought that his attachment to his home and country would bind him to his native land with stronger ligaments than if born in a foreign country. And an additional reason was assigned by our fathers for this restriction: that if foreigners should be elevated to that station, they might be more subject to foreign intrigues; and the government might then be weakened and finally overturned. But I do not see why they should be refused the privilege of being elected Governor, in the Constitution we are about to form. I repeat, in conclusion, that it is my extreme solicitude not to do any thing, and not to retain any thing in our Constitution which may come into collision with the fundamental law of the land, the Constitution of the United States, which will induce me to vote for the amendment proposed by the gentleman from Montgomery. Adopted.

Adopted: the word "native" was stricken out, and the section as amended adopted by the Convention.

Mr. Cunningham proposed to strike out the 5th section, and insert in place of it a section providing for a fixed annual salary of two thousand dollars.

Mr. Young proposed twentyfive hundred.

Mr. *Davis* said that he would explain the reason why this section was framed by the committee as it was. In fixing the salary of the Governor, there are three things to be taken into consideration: the responsibility of the office, its duties, and the ability of the government to pay. And believing that in the present condition of the country it was not in the power of the government to pay such a salary as it should pay, and ought to pay when better able, the committee thought it best to leave it to the discretion of the Legislature, supposing it would be fixed at the first session in accordance with present circumstances; and that at a subsequent period the salary would be increased.

Mr. *Forbes* said he hoped it would be fixed in the Constitution. If there was any subject rather than another upon which he considered himself instructed, it was economy. He was anxious that salaries should be fixed, and he believed that the people are willing to have the Convention fix them. He thought they should be fixed permanently, or at least for some period of time. He believed it the duty of this body to fix the salaries of officers, so that the people may know what they have gained by the change of government.

Mr. *Hogg* said that he intended to vote against the amendment. He was unwilling that this Convention should now fix permanently salaries, believing that circumstances at present might require lower salaries than those which may be proper and practicable some three or four years hence. Not but he would be as willing as any man to give good salaries; but he believed the country entirely unprepared at this time to fix them at what they should be. He would therefore prefer leaving this matter to the Legislature.

Mr. *Moore* said he considered this one of the most important questions submitted to this Convention. It is very important to be able to tell the people, when your Constitution is framed, how much this government is to cost them. He was unwilling to vary the principle contained in this section. Why say "the salary shall not be increased or diminished," &c. Why is this inserted? Because you are unwilling that the Governor should go to any member of the Legislature, and say to him, "vote to give me a high salary, and I will give you a public office." It is to prevent him from using any undue influence upon them, and them from using it upon him. He hoped that in adopting this Constitution the Convention would carry out the views recommended by the committee who reported on yesterday, and furnished us with what they considered a correct statement of the revenues of the country, and the amount of the salaries as they thought they should be established, in order to come within the income of the country. When this Constitution shall be submitted to the people, it is very desirable to inform them how much the government will cost. If they should be led to believe that it laid them under a burden of taxation greater than that of Louisiana, Arkansas, or other neighboring States, they may be induced to vote against it. It is important to emigrants, for if our taxes are too great, they will not immigrate here. Let our government be as stable as possible, and the salaries also stable; let them be so fixed that there shall be no inducement to the exercise of undue influence between the various branches of the government. Let us make our taxes lighter than those of any other country, that emigration may pour in in floods, and when we shall have derived from the industry of those emigrants a large surplus revenue, it may constitute something either towards the liquidation of our public debt, or to diffuse the blessings of education among the children of the country.

Mr. *Caldwell* said: It appeared to him that fixing the salary of the Governor to continue the same as long as the Constitution stands, would present a difficulty as great as if it did not contain any salary at all. It is true we do not know at present the exact amount of revenue which may be anticipated. We might, however, prescribe the salary of the first Governor. We can make some sort of an estimate of what the revenues will be for two or three years. But by fixing the salary now, we may fix it far below what the people or government will be able to stand hereafter. And why narrow down the powers of the Legislature? Why not leave this matter to the Legislature, which comes directly from the people, and is directly responsible to them. Let the responsibility be upon their shoulders, and not upon ours. He was willing to leave it to the Legislature for the future. If we shall see proper to remain as we are, and to become the mammoth State of the Union, we shall be able to afford salaries much more liberal than in case of a division into two States. He would prefer leaving it, establishing perhaps in some other part of the Constitution what the pay shall be for the present.

Amendment lost.

Mr. *Jones* proposed an amendment, giving the first Governor a salary of two thousand dollars.

Mr. *Davis* suggested to add to the section "the first Governor shall receive a salary of $2,000, and no more."

Mr. *Young* said that he for one was in favor of paying the officers of the State, including the Governor, fair salaries. He held that the Governor was one of the first and most important officers of the State, and believed that his salary should not be inferior to any in the government. It has been suggested that the Convention would be in favor of giving the Justices of the Supreme Court a salary of 3,500 or 3,000 dollars. He saw no just reason why their salaries should exceed that of the Governor. The time of the Governor will be as exclusively taken up as that of any other officer. It is true he may have his farm or his negroes; but so may the Judge of the Supreme Court. Why should they be entitled to a greater salary, when their expenses are not estimated as equal to that of the Governor? They are not required by the nature of their office to entertain the company that the Governor must; and he could see no reason why a Judge should have a higher salary. In fact, however, he did not believe that any one of the salaries spoken of is sufficient.

Mr. *Lipscomb* said, not having intended to say a word on the subject, he would only remark that economy in new beginners in private life, is one of the first virtues: and in a new beginning government it is very important. He far one was not willing to attach a salary of more than $2,000 to any office formed by this Convention.

Mr. *Baylor* said he should vote for moderate salaries throughout, and more especially so far as the Judiciary is concerned. He thought $2,000 sufficient either for the Executive or the Judges.

Mr. *Young* said that he neither anticipated being a Judge nor Governor, but expected to remain a plain citizen of Texas. At the same time he would like to see those officers receive adequate salaries. He, too, was in favor of economy, but there seemed to be some diversity of opinion with regard to that principle. There was, he believed, a great degree of extravagance disguised under the word economy. He was in favor of paying officers a fair compensation His object was that the offices should be filled by men who are qualified. He for one was opposed to fixing salaries at so low a point as to forbid men of capacity from filling the offices to which they are attached: and he was equally opposed to fixing them at a point which would exclude any individual who has not the means within himself to defray the requisite expenses of any station. He wished the matter of compensation to be so arranged as that any and every body might aspire to civil offices: though he did not wish, on the other hand, to enrich any body, or any set of men.

Mr. *Jones* thought the remarks of the gentleman on the subject of compensation did not apply in their full force, to Texas. The first Convention is admitted to have contained a greater amount of talent and ability than any body which has since met here, except this. And their services were rendered without compensation. He would ask any gentleman here if we have not had superior talent upon the bench since the reduction of the salaries of District Judges? He believed, indeed, that if no salaries were granted, we should secure more intelligence, if not more disinterestedness.

The 5th section was adopted, with amendments.

On motion of Mr. Van Zandt, the committee rose, reported progress, and asked leave to sit again. Report adopted.

On motion of Mr. Moore, the Bill of Rights was recommitted to the committee on General Provisions for revision. Whereupon,

The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Friday morning, July 18, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The credentials of Ballard C. Bagby, a delegate from the county of Red River, were presented: and on motion of Mr. Young, Mr. Bagby was invited to take his seat as a member of this body.

On motion of Mr. Gage, Mr. Bagby was added to the committee on the State of the Nation.

Mr. Evans presented the petition of Charles S. Hensley, praying for the establishment of a new county, adjacent to the Forks of the Trinity; which was referred to the committee on the Legislative Department.

Mr. Lipscomb offered the following resolution;

Resolved, That the committee on General Provisions be instructed to enquire into the expediency of authorizing the Legislature to protect, by law, from forced sale, a certain portion of the property of all heads of families.

Which was read and laid on the table one day, for consideration.

Mr. Hemphill offered the following resolution:

Resolved, That the committee on General Provisions be instructed to inquire into the expediency of declaring, in the Constitution, that all certificates for headrights, and all claims, grants, and evidences of title to lands, which were issued to fictitious persons, or were forged, are, and the same were, null and void from the beginning.

On motion of Mr. Young, the rule requiring the resolution to lay on the table one day for consideration, was suspended.

"Judiciary Committee" was inserted, in the place of "Committee on

General Provisions;" and the resolution, on motion of Mr. Young, was adopted.

On motion of Mr. Davis, the Convention proceeded to the

ORDERS OF THE DAY.

The report of the committee on the Executive Department being first in order, was taken up.

Mr. Forbes moved to lay the report on the table.

Lost.

On motion of Mr. Van Zandt, the Convention went into committee of the whole on the said report. Mr. Van Zandt in the chair.

In section 8th, Mr. *Cazneau* moved to strike out "or at a different place, if that shall have become since the last adjournment dangerous from an enemy, or from contagious disorders."

Mr. *Mayfield* said he was inclined to be in favor of the amendment. He believed it the duty of the Governor, when danger threatened, to stand fast by his position, and protect the capital of the country. So far as contagious disorders are concerned, it might give latitude and license, in case of any kind of alarm, to flee from the post of duty and danger. He had himself witnessed, in the short period he had lived in the country, the unparalled example, when the country was threatened by an invading foe, of the first military order given being for the abandonment of the seat of government. If this provision should be incorporated in the Constitution, an act of cowardice might be shuffled off, by attributing it to contagion, infection and pestilence.

Mr. *Davis* said, that the only authority given the Governor by this section, was that, when it might be necessary, on extraordinary occasions, to convene the Legislature, and the seat of government might be in the hands of the enemy, or dangerous from contagious disease, of convening it at some other point. He has here no authority to take the heads of departments, and remove from the seat of government to another point. An authority of that kind is given by a provision in the Constitution of the Republic of Texas.

The word "contagious" is not to be understood in its technical sense, but as applying to that numerous class of diseases called epidemics: such, for example, as that which swept hundreds from Galveston during the past year. Would it be desirable to convene the Legislature at a point where such a disease was prevailing? He did not see the danger which gentlemen seem to think lurks in this provision. If it were the same as that of the Constitution of the Republic, these objections might possibly apply to it. A similar provision is found in the Constitution of Louisiana, where the word "epidemics" is used. Who would pretend to give the name of cowards to the members of the Louisiana Convention? The Constitutions of various other States contain a similar provision.

Mr. President *Rusk* said he should vote for the motion of the gentleman from Travis, in order to insert this: "or at a different place, if that should be in the possession of a public enemy."

Mr. *Moore* would ask if the enemy were within eight or ten miles of the seat of government, if it would be proper to convene the Legislature there? And he would ask the honorable gentleman if he had not known more soldiers lost by epidemics than by the enemy? He hoped the section would remain as it is, adopting the suggestion of the gentleman from Liberty, to insert the word "epidemics," as in the Louisiana Constitution, instead of "contagious disorders." A similar provision is contained in the Constitution of Alabama, and has been tried for years.

Mr. President *Rusk* would prefer his proposition if the enemy were within ten miles of the seat of government. Let the people turn out *en masse*, and drive them away. He thought it unnecessary to insert anything in relation to diseases. He apprehended that the seat of government would be located in a healthy portion of the country. And the same necessity no longer exists for extraordinary sessions of the Legislature. We have the United States now between us and the enemy, and he did not think there was much danger of their taking the seat of government, if there had been heretofore.

Mr. *Brown* said he hoped the motion to strike out would prevail, and the substitute of the gentleman from Nacogdoches be adopted. He thought it dangerous to insert a power admitting of such a latitude in construction. There might be an executive in power, who would convene the Legislature in violation of the spirit and intention of the Constitution, and might obtain a literal sanction for the act. Danger is differently estimated by different individuals. He would not entrust an authority of that sort to the Executive, which would place it within his power to contravene the spirit of the Constitution by a mere compliance with the letter. In respect to contagious diseases, there are diseases which lead as surely and immediately to death, which are not contagious; and which ought as much to be provided against. But he would have no provision of that sort. He considered it necessary that the seat of government, where the archives, upon which the property and the liberties of the citizens depend, are deposited. should be preserved; and so far from inculcating in the Constitution the propriety of fleeing from the place, the moment it should be assailed, he would make it imperative on the Executive not to remove, unless in imminent peril. Laws have an influence, not only legal but moral; and let the mind of the Executive become accustomed to this idea; and let the opinion be transmitted from Executive to Executive, it will increase in strength and power as it progresses, until upon the merest conception of danger that may arise, the Legislature will be assembled elsewhere than at the seat of government, and the property of the nation abandoned. If any principle should be inculcated here, it should be, that the national property should be guarded and defended in every possible way, and that the Executive should be compelled to stand at his post as long as it could be defended. He hoped the clause would be stricken from the Constitution.

Mr. *Jones* said he should not detain the Convention with a speech upon this subject. He was rather unfortunately situated, being opposed to that portion of the report as it now stands, and at the same time not exactly pleased with any amendment offered. He rose therefore to give notice that after the several questions have been taken, he will offer one that will at least satisfy himself. He proposed to strike out all from the word "at," to the word "disorders," inclusive. His object was to place the responsibility with the Executive entirely. The people will then be the judges of the necessity, and will sustain him if he is right. If it shall appear that he has called the Legislature together without cause at another place than that designated by law, he will be directly responsible to the people. He proposed to leave out everything providing for any contingency whatever.

The question was put on Mr. Cazneau's amendment; to strike out "or at a different place," &c. Carried.

The amendment offered by Mr. Rusk, to insert "if that should be in the possession of a public enemy," was then adopted.

Mr. *Lusk* proposed a substitute for the section, providing that no legislative business should be transacted except at the seat of government.

He said he was confident that this body would temporarily locate the seat of government at a place with which the people would be satisfied. He wished to take from the Governor the privilege of moving it about from time to time. He was clearly of opinion that it would be located temporarily at a point where there is at this time no danger to be anticipated from the public enemy: and as to disorders, he knew not where you could go to get clear of them. His people sent him here with instructions to locate it somewhere or other, and he wished to restrict the Governor from taking it about from one place to another. When the Legislature is called together by proclamation, let the Governor declare the purpose for which it is called to sit, and let the work of legislation be left to the regular sessions.

Mr. *Lipscomb* said the substitute proposed by his friend from Brazos had operated well in Tennessee. He would prefer an entire failure to convening the Legislature at any other place than the seat of government.

As to epidemics, he would prefer leaving it to the Legislature to make the necessary provision, if any is necessary. It is not presumable that epidemics would be so prevalent as to prevent the meeting of the Legislature, and it might then adjourn.

With regard to the amendment offered by the gentleman from Nacogdoches, (Mr. Rusk,) he thought the word "possession," when used as a military term, too vague and indefinite. It might be either actual or potential possession. It might be believed by the Governor, if the enemy were in possession of Bexar, that Austin was potentially in his power. He would prefer some expression about which there could be no dispute.

Mr. *Lusk* said: Upon all subjects, we come to our conclucions from the lights of past experience. How has it been with us upon this? Our Congress, when convened by the President, has, on more than one occasion, entirely neglected the business for which they had been called together, and taken to legislating upon all matters. At one time they repudiated the debt of the country, although they have generally received their own pay. Let us look to the history of the past, Mr. President, for what may happen hereafter. If we are annexed and become the State of Texas; and there can be no doubt of it now, the Legislature will not be required to convene often. We are poor: and if the Legislature is convened together and sits one, two, three or four months, it will be hard to pay the expense; and it will not now as heretofore, be derived from a light duty on a fine watch, but will come directly out of the poor man who earns his living by the sweat of his brow.

The substitute offered by Mr. Lusk was rejected.

Mr. Lipscomb proposed to insert "actual" before "possession."—Adopted.

The section as amended was then adopted.

In section 9th, Mr. Caldwell moved to insert "in writing," after "information." Adopted.

In section 11th, Mr. President Rusk moved to strike out "penal."—Stricken out.

Mr. *Wood* proposed that it should be made the duty of the Legislature at its first session, to prescribe the rules and regulations referred to in the 11th section. It seemed to him that without that amendment, the Governor would have no right to exercise the power intended to be given him by this section. Adopted.

Mr. President Rusk proposed a substitute for the whole section, which was adopted.

Mr. Young proposed an additional section providing for a Lieutenant Governor.

Mr. *Davis* moved to strike out that part which makes him President of the Senate. He believed the Senate could find one of their own body, perfectly competent to preside over them, and he should object to the Lieutenant Governor discharging that duty. He was in favor of administering the State of Texas on as economical a plan as possible. He could not see the necessity of electing an individual to preside over the Senate. If gentlemen desire such an officer, let him only discharge the duties of Governor, in case of a vacancy, and give him no pay, unless in the discharge of these duties.

Mr. *Young* said his object in introducing the provision was simply this: if the President of the Senate perform these duties in case of the death of the Governor, a single county in the State will have the privilege of electing the Governor; but where a Lieutenant Governor is chosen with the Governor, the election is general throughout the State: The additional pay which he is entitled to as President of the Senate, is a minor consideration.

Mr. Davis's amendment was lost.

Mr. Runnels offered a substitute for the additional section, which was accepted by Mr. Young, and adopted by the committee.

The committee rose, reported progress, and asked leave to sit again. Report adopted. Whereupon the Convention adjourned until half past 3 o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Gage, the Convention went into committee of the whole, upon the report of the Executive Committee—Mr. Smyth in the chair.

In the 14th section, Mr. Runnels offered an amendment, providing that "there shall be a Secretary of State, who shall be appointed by the Governor, by the advice and consent of the Senate.

Mr, *Lewis* said: I cannot, Mr. Chairman, forbear making some remarks in opposition to the proposition of the gentleman from Brazoria. I think, sir, that to invest the Governor of this State with a patronage of that sort, would be to give him altogether too much power. The duties of Secretary of State, I think it will be allowed, are of such a character, that he should be entirely independent of that officer. What are they, sir? To "keep a fair register of all official acts and proceedings of the Governor, and when required, to lay the same, and all papers, minutes and vouchers relative thereto before the Legislature; and to perform such other duties as may be required of him by law." Here then are his duties, specifically assigned. They are such, that in the strict discharge of his duty, he may in many instances be brought into collision with the Governor. Hence the importance of these offices being entirely distinct and separate, not only with regard to the discharge of their respective duties, but the officer here alluded to should derive his authority from a different quarter. I believe in none of the States where I have resided, is the Secretary of State appointed by the Governor. The tendency, I think, is to create a cabinet for the Governor, over whom he may exercise absolute control. To this I am opposed: and I will remark here, that I perceive a very general impression that the people are not qualified to make the selection of officers of this sort. I have more confidence in the character and intelligence of the people, and therefore I am disposed to refer the election of an office so important, and whose duties are so necessary to the good order of society, to the people.—Whatever may be done by this Convention upon the subject, yet as I act upon principle, I shall advocate such a mode of appointment whenever the question shall come up before this honorable body. I will remark, however, that I am under no obligation to any portion of my constituency to refer to the people the election of any officer of the government, I am totally untrammelled in that particular. But I think that mode of election most in accordance with the genius of our institutions, recognizing as we do in our Bill of Rights, the fundamental principle, that the people is the source of all power. Yet we are told that the people are not sufficiently acquainted with these matters; that they are not sufficiently intelligent: that they will be governed by their personal predilections, without regard to qualification. My experience teaches me differently. There are perhaps some offices which they would sometimes confer upon personal friends. But whenever the duties of an office are of any great importance, they discard all considerations of this kind, and act with a higher object in view. And sir, I cannot more perfectly illustrate the position I take, than by pointing you to the members of this Convention. Without solicitation they have been elected from the great mass of the people. The importance of the occasion was considered by the people. They had in view the construction of a Constitution to last perhaps for ages: and they knew that this was not the work of bunglers. They then cast about them for the best talents they could find. And could a better specimen have been afforded of the best talents and experience to be found in Texas? Myself, I say, excepted: for I would not pretend to class myself with some of the distinguished gentlemen here. Why then impute to the people such a want of intelligence and disinterestedness? If, when occasion demands, experience has shown that they select the best qualified individuals from the whole country, to aid in carrying out the measures they so ardently desire, why are they not capable of choosing a Secretary of State? His duties are known to them: they are acquainted with the qualifications which are necessary; and he who should seek the office, would have a reputation co-extensive with the limits of the State.

Mr. *Lipscomb* said that he did not intend to occupy the time of the Convention upon this subject: but was disposed to make known the reasons why he should vote for striking out. He professed to entertain as great a respect for the people, the source of all power, as any body else, as great as the gentleman from Montgomery himself. The only difference was, that he (Mr. Lewis) thought that to be passing a slight upon the people, while he (Mr. Lipscomb) thought to be treating them with due respect. He believed they would be perfectly satisfied to be relieved from this appointment. From the nature of the office, he who fills it ought to be in harmony with the Executive. He is in daily intercourse with him: his political duties bring him into an immediate connexion with the Executive. And by having this appointment with the Executive, they will increase the responsibility of the Governor; and at last it is the act of the people through the Governor. The people elect a Governor, knowing that he is to appoint the Secretary of State. He did not approve the intimation thrown out, that any disregard had been shown the people, or any disposition evinced here to keep any thing from them. He had not seen any such manifestation here: he who should attempt it would be accounted a madman. It is admitted that the people is the source of all power: but it would be impossible for the people to exercise many and important powers. This is certainly a power which it would be inconvenient to the people to exercise; one which they would be perfectly well satisfied to have placed some where else.

Mr. *Davis* said: I shall oppose striking out for the purpose of amending as proposed. I am opposed to the Governor's appointing any officer whatever. In case I prefer the election by the people to that by the Governor: for I am not willing to give the Executive that power, or any power that can be well exercised by the people. And my vote shall be recorded upon the journals against it. For I do contend that the people are qualified to select their own officers. Our government is as near a democracy as it was possible to make it. But it is impossible for the whole people to meet together and legislate; it is therefore necessary that they should select agents, to whom they must transfer a portion of their original powers: but when they can exercise them directly, I am in favor of their so doing. It was a prevalent notion before the formation of the government of the United States, that the people are incapable of self government; that they should be ruled by something like an aristocracy. But, sir, have the fears then entertained been realized? No, sir. What has been the result of the experiment? It has made the United States equal to any country on earth: its improvement has been more rapid than that of any other: it has satisfied the lovers of freedom throughout the world, that the people are capable of governing themselves, and capable of selecting their own officers. I know that some entertain the opinion that they are not qualified to select this and that officer. They are qualified however to select the Chief Magistrate of the United States, the Governor of the State, and the Legislature. But they say it is inconvenient for them to elect the Secretary of State. Is there a man here who will rise in his place and say that the people are not qualified to elect the Secretary of State; that they have not sufficient intelligence and wisdom to elect a man to discharge the duties of that office? And if this privilege is taken from them, it will not be upon the principle that they are incapable of exercising it themselves. It is a settled maxim that power is always stealing from the many to the few. I say let power remain with the many so long as they are capable of exercising it. If we begin by saying they are not qualified to choose this officer or that, we shall go on till at length we shall say they are not qualified to elect their Representatives or their Governor, and ultimately that they are not qualified to do any thing whatever. I know that in many governments the people are incapable of self government: for example, in the government upon our western border. But what is the reason? The want of intelligence, of education, and of virtue. It is not the case with the Anglo Saxon race, that is, the American branch of the Anglo Saxon race. The people of that race have shown their capacity for self government: and so long as we are desirous to maintain the institutions of our country pure and uncontaminated, let us leave in the hands of the people all the power that by possibility they are capable of exercising.

Mr. *Love* said: It is an admitted fact, I believe, Mr. Chairman, that we are all lovers of the people. It is also the fact, however, and I for one, speak it without disguise, that we love them better when they do as we wish, than when they do as they please. Admit the principle of respect for the people, yet I am inclined to think it has nothing to do with the selection of officers for particular situations. I must confess it has struck me with a good deal of surprise to notice the course of some gentlemen who were disposed to invest the Governor with military power, a power if any, dangerous to the people of the country. That, according to this Democratic doctrine, was all right. But when we seek to give him the appointment of a man, who is to be or should be connected with him, not only officially, but in the most confidential relations, then the power is dangerous to liberty. Although this very honest people may elect a man Governor, yet they have not confidence enough in him to allow him to select a man who is to be daily and hourly in association with him, whom he is to consult and advise with as a friend. This very kind and loving people will trust him as Governor, they will give him their votes for that office; but it seems they are afraid to trust the Governor with a privilege necessary for the disposal of the business of the country. I trust that some time or other, we shall select a Governor from a class for which I have the greatest possible respect, as plain, honest, sensible and good men, though perhaps he may spell Congress with a K; who shall have neither friends to advance, nor enemies to put down; who loves his country and will seek his country's good, having no political views beyond his station, and being more capable than others of filling it well. If that period should ever arrive in Texas, it will be indispensably necessary that our Governor should have a friend at hand who can at least write his message, like the Executive of every country, even the U. States of America. It is a fact as notorious as any thing can be, that it is very seldom indeed our President has written his own message: though he may have given the rough draft, or contributed his ideas and views. Every President or Governor is not a scholar. Now if we want the affairs of government to be conducted well, the Governor should at least have some friend about him in whom he can confide, with whom he can advise upon affairs of importance. If you do not give his appointment to the Executive, you will create an opposition power; the Secretary will become inimical to the Governor; he will be disposed to break him down in order to take his place; and the Governor will look upon the Secretary as a spy upon his conduct: and great confusion must necessarily ensue; and great injury be done to the best interests of the country. Now, the gentleman who last occupied the floor, says that no man dare get up here and argue that the people are not qualified to elect a Secretary of State. I will say that however qualified to select some officers, yet nine times out ten they are very bad judges of who ought to be Secretary of State. There may be a few men who have a great reputation. Liberty or Montgomery might perhaps have some one known to the people as having the capacity to fill any office; but at the same time, in the obscurity of private life there might be found a man, never heard of by the people, who shall be as well qualified as either. Modest merit very often remains in the shade; and there you will often find the man of the greatest talent, and one who will do more service than one who courts popular favor and canvasses the whole State.

It is a poor privilege for the Governor to claim, that of choosing his Secretary of State; if he selected a man of no standing, the nomination will not pass the Senate; and as to the danger, I do not believe that in all time to come our government will be overturned by the appointment of Secretary of State by a Governor just installed by the voice of the free and independent voters of the State of Texas.

Mr. *Davis* said: he did not know that it was so absolutely necessary to have a confidential friend of the Governor in that office. Such was not the opinion of some of the States which have framed Constitutions. If appointed by the Governor, nine times out of ten he would be a mere tool. It would be useless to call on him for information in relation to the conduct of the Governor; he would feel under a debt of gratitude, which he would repay by getting around any thing improper in his conduct as easily as possible. As to writing a message, any man elected Governor can find a friend to do that if necessary; it is not indispensable that it should be written by a Secretary of State.

He thought it a dangerous precedent to set, to say that the people are incapable of doing any thing. For our government is founded upon the principle that the people are capable of self-government.

He was satisfied that an effort would be made to give the Governor the appointment, not only of Secretary of State, but of many other officers. The war has commenced upon the Secretary of State; that is the first point of attack. He had understood it was the disposition of this party to fill almost all the offices in the country by the Governor; consequently he met it from the beginning and should oppose it throughout.

Gentlemen say it is inconvenient to the people to make the appointment. Is it not equally inconvenient to the Governor? He is to be elected on the days of the general elections, and it would be very little additional trouble to the people.

Mr. *Navarro* said that he had listened to the arguments of gentlemen upon this question. As a member of the Executive Convention he alone had sustained the principle adopted in the amendment that the Secretary of State should be appointed by the Governor and confirmed by the Senate. The other members of the committee were all against his views, and he did not think proper to make any remarks upon the subject at that time, reserving them for a more fitting opportunity. It was his firm belief that the best mode and manner of appointing the Secretary of State was that to which he had alluded. The remark had been made to him by the chairman of the committee that the people of the U. States and of Texas as a portion of the United States differed materially from that with which he had heretofore associated; in plain words, that the Mexicans are not always right in the selection of their functionaries, whilst these people of the Anglo American race are capable of selecting individuals in whose capacity and integrity full confidence can be placed. The want of intelligence of the Mexican people had been thrown into his face. He was very much grieved at these remarks, and in consequence was not willing to participate then in the discussion, and had declined making any proposition upon the subject. He would now subscribe cheerfully to the amendment offered by the gentleman from Brazoria. And he would say that he should not vote for it in consideration of the high intelligence of the people of Texas or their superiority in making selection of their officers; but in consequence of the fact, that the people of the United States, the very people pointed out as excelling in sense and intelligence, conform to the antiquated system of the stupid people of Mexico, in authorizing the President of the U. States to appoint his ministers or the members of his cabinet. Upon that principle, and that alone, he should vote for it. Further, the doctrine that the Governor should appoint his cabinet is founded in strict justice and the principles of public convenience. The virtuous, intelligent and enlightened people will certainly elect a suitable man to the highest post in the government. They are capable no doubt, of judging of the qualifications of a Governor; but it may be a question whether they can judge of those of a Secretary of State. If there is sufficient confidence in a man on the part of the people of Texas to elect a man Governor who may merit the office, why should they not have such a high and implicit confidence in the intellect, talent and judgment of that individual, as to presume that he will not appoint a man, unless he merits his full confidence; unless he is an individual, who, in case of need, can stand side by side with him, and propose and advocate the measures necessary to carry out his views of policy.

No doubt the people at large, with the talent, integrity and capacity which they possess, are fully competent to select the members of the Legislative branch of this government. But for a Secretary of State it is necessary that the people should have a sufficient personal knowledge of the person to fill the office of Secretary, and is it possible that they could have this acquaintance? Although they might have a general knowledge of the qualifications and integrity of individuals, at the same time it might be a question whether they have that intimate knowledge necessary to fix upon the man best fitted for the office now under consideration.

Mr. *Rusk* thought the question of the election of Secretary of State by the people so novel, and one that had received so little sanction from former experience, that the subject was in no great danger from any vote of this Convention. But inasmuch as it had been stated that the war had commenced, he would say a few words now. He was not influenced in the vote he should give by the argument, that the people are incapable of exercising a power of this kind. He had no such reason, acknowledging as he did that the people of Texas knew as much about these matters, and were quite as intelligent as any; though like other people they might be improved. He was not influenced by fear of the people. But there was one argument treated upon by the gentleman from Bexar, (Mr. Navarro) so forcible that he would here repeat it: The Secretaryship of State is a minor and unimportant office; and not of sufficient consequence to draw forth the talents of the various portions of the State. Some individuals about the seat of government will be the candidates before the people, who will be cllaed upon to decide upon the claims of individuals whom they do not know. And how will they decide? They must be guided in their election by the opinions of a few influential individuals. And would you have the candidates for Secretary riding all over the country, making stump speeches, and calling the people from their labors to listen to the explanations of each with regard to his particular and superior qualifications for the office? The people are called upon to do, what? To determine upon their respective qualifications, and to select men fitted for the faithful discharge of the duties of Secretary. Will they know the man? Not one hundred individuals in Liberty, Nacogdoches or Jefferson counties, for example, would know the individuals who are candidates here. How will they ascertain their qualifications? Why, they must inquire of some one, the gentleman from Liberty, for example. Then they are not acting from their own knowledge of the man; they are confiding entirely in that of the gentleman from Liberty.

He had an objection to this reference of all officers to the people. He believed the people the fountain of all power, and should ever maintain that position. But at the same time he would not call upon them to act directly in every matter; he would not put them to the trouble of electing every officer from the Governor down to Constable. Why fill the country with candidates, and the newspapers with slang and slander? Would the liberties of the people be overturned by the appointment of Secretary of State by the Governor? Is it anti-republican, when twenty seven of the States of the American Union have refused to give it to the people? Are these States not as intelligent, as free and as republican as we can claim to be? He believed there is but one State where the people are burdened and troubled with the election of the Secretary of State. He should vote for giving it to the Governor, because he thought it the proper mode, and not because he would cast any reflection upon the intelligence or integrity of the people. They do not want it, they do not ask you to send among them a host of candidates for Secretary of State, to ride from the Rio Grande to the Sabine, making stump speeches, and annoying them with a statement of their qualifications.

Mr. *Brown* said that although he had no doubt of the capacity of the people to elect their officers, yet he for one was unwilling to refer this appointment to them. Which of the other methods it was best to adopt he was not certain, without some further information upon the subject.

Mr. *Runnels* said: by referring to the 12th section which has been adopted, it will be seen that there is to be a seal of the State, to be kept by the Governor, and used by him officially. Every one knows the nature and character of the office of Secretary of State. He is, in fact, the keeper of the seal, and the individual who has to use it. If he is corrupt and disposed to inflict injury upon the Executive, he might make an improper use of the seal without the knowledge of the Governor. Is it not therefore important that he should have the selection of the Secretary, who may have it in his power so seriously to injure him? I believe there is no office under the sun into which corruption may not creep; and we have to rely upon the integrity and ability of those elected to public offices for the faithful discharge of their duties. The gentleman from Liberty in his remarks adverted to the government of the United States. Does he find any precedent there to sustain him in the position which he occupied? Sir, by a reference to the government of the United States, it will be found that the Executive has the power by and with the advice and consent of the Senate, to appoint a Secretary of State, a Secretary of War, a Secretary of the Treasury, an Attorney General, and a Post Master General, constituting, I believe, his Cabinet. It will be found that none of the States, except Mississippi, the State from which I myself came to this country, is the Secretary of State appointed otherwise than by the Governor or the Legislature. The Legislature is more capable than the people to elect that officer, because they have better means of ascertaining the qualifications of the individual candidates. It is impossible, as has been justly remarked, for the people, dispersed as they are over so large an extent of country, to make themselves sufficiently acquainted with them. Would it not be an anomaly in the history of free governments, a most extraordinary thing indeed, if an individual who should be a candidate for an office nothing more nor less than a mere clerkship, a subordinate officer under the Executive, should he be compelled to traverse the country from one end to the other, electioneering for an office, the salary connected with which should not exceed a thousand dollars? Why, he would expend more in the canvass; and I should like to know what he would say to the people in regard to his qualifications. There is nothing connected with office about which the people care, except that the Governor shall have an efficient officer and a just man as his Secretary.

Mr. *Van Zandt* said he would detain the Convention but a moment in giving his views, as he conceived that too much importance had already been attached to the subject. The duties of the office are certainly simple and plain: and principally of a clerical character; and by no means of that high degree of importance which gentlemen seem disposed to attach to them. Nor could he see any great danger in the proposition which had excited their fears for the liberties of the people. We have on this subject the advantage of the experience of a gentleman who has occupied a high station in a State of the American Union, and whose position gave him an opportunity of investigating and seeing the effects of the system so strongly contended for. Let us profit by the warnings of experience. He himself chanced to reside in Mississippi for a short time, during which the election for State officers occurred. He well recollected seeing men, some of whom were holding office at the time, abandoning their posts, and travelling the State seeking a re-election. He wished that officers should attend strictly to their duties, and at all times be found at their post.

He hoped this Convention would not depart materially from established principles, but would adopt the course advocated by the gentleman from Mississippi, when the other system has been carried out to its full extent.

One word further. He believed it was proposed not only to elect the Secretary of State by the people, but also the Auditor and Comptroller. Now he would refer to one officer who had discharged the duties of Comptroller for the last seven or eight years, and who from the purity of his character, and his superior fitness for the office, had given universal satisfaction. It were needless to name Mr. James B. Shaw. He would ask if there could be found throughout the whole extent of the Republic, a single individual more capable then that gentleman? Yet what chance, he would ask, would that man have, honest and retiring in his character, and unobtrusive in his manners, were he to enter the lists before the people against some of the log-rolling gentry of the country? Sir, he would be left in the shade, and and some full-mouthed demagogue would be installed in his place.

Mr. *Scott* said, that as to the question in what manner the Secretary of State should be appointed, he should prefer that by the Governor and Senate, and should vote for the amendment of the gentleman from Brazoria; because he thought it comported more with convenience and the fitness of things than the reference to the people at large. He had himself seen in the State of Mississippi much inconvenience arising from that mode of appointment. And it does not ensure officers of better qualifications, if as good; he thought not as good. There were other offices, he felt it due to himself to say, which he thought should be referred directly to the great source of all power; but with regard to the Secretary of State, he thought the Governor should have the appointment with the consent of the Senate. The people need not be troubled with it. He should therefore, on this occasion, vote for striking out, and inserting the amendment of the gentleman from Brazoria.

Mr. *Lewis* asked for a division of the question. As had been remarked, this was the beginning of the war between the people and the governors of the people. He whold ask members to turn for a moment to the proceedings of the Virginia Convention. A similar attempt was made there. Mr. C———, who was infinitely more of an aristocrat than any gentleman upon this floor, denounced it as aristocratic, and subversive of the liberties of the people. The people are not to be barred from the exercise of their will in a choice of this kind, because it is a matter of inconvenience. On the principles advocated by gentlemen, they may be divested of all their rights: first, because they are not sufficiently intelligent; and secondly, because it is inconvenient to exercise their privileges. As a representative of the people of this county he protested against any such doctrine.

Mr. *Evans* wished to offer an amendment. He proposed to substitute the term "clerk" for that of "Secretary of State." His object was this: If the Secretary of State is the mere clerk of the Governor, to attend to his business, he might be appointed by the Governor: if, however, it is his duty, as indicated in this section, to attend to the business of the people in general, he held that he should be elected by the people. As all the arguments went to convince him that the Secretary is the mere clerk of the Governor, let him be called by his true name.

Mr. *Kinney* said: I will, sir, in the first place, apprise every member of this honorable body, that I do not rise to take part in any war nor any fight: because I assure you all, that I have had enough of that at home, without coming to the Convention. There was one part of the argument of the gentleman from Bexar, which struck me very forcibly.—That the Secretary of State was an assistant of the Governor; that the Governor was responsible for every act of his Secretary: that the people could not know the duties devolving upon the Secretary of State, or the duties which the Governor might desire him to perform: and consequently, he would be the best judge of the man who could best perform the duties he required in his own way, and would be willing to assume the responsibility, if he had his own machine to carry out his views. The people may as well elect a man as director over one's own family. They may think that he does not do the duties of his family as well as another who might be selected: consequently they must select a man to take his place.

The Governor, elected by the people, has his functions to perform, and has his assistants to help him; and he is held responsible for all that is done. He is the proper man to choose his assistants. As, if I had a family, I should want to select the individual who was to assist me at home. I am therefore in favor of the amendment offered by the the gentleman from Brazoria; and I assure you, sir, that this opinion will not cause any difference or get up any fight or war between myself and any gentleman who takes a different view of the subject; because, although I have some little reputation as a fighting man, yet I am perfectly cool upon this subject.

Question on the adoption of the substitute: lost.

Question on the division of the question, &c.: carried.

Question on striking out: carried.

Question on inserting "who shall be appointed by the Governor, by and with the advice and consent of the Senate;" and,

Mr. Davis proposed to insert "who shall be elected by both Houses of the Legislature."

Mr. *Mayfield* addressed the Convention as follows: It was my purpose, Mr. Chairman, to have been silent during this discussion, if the vote had been permitted to be taken on the amendment of the gentleman from Brazoria, with that of the gentleman from Nacogdoches. And in presenting any views which I may entertain upon this subject, I evidently do it at an unfavorable moment, as the question has already in most of its bearings been amply discussed by the various orators who have addressed the chair. Nevertheless, it has occurred to me that there are some reasons independent of those already alluded to, to my own mind conclusive, and if possible based upon higher considerations, why that plan should be adopted over and above all others. When we look at the nature and character of our government, and the institutions of our country, we find it necessary in dividing the various branches of government and defining the powers belonging to and appertaining to each, to constitute three separate heads, the Executive, Legislative and Judiciary Departments. The very declaration, that the powers of government shall be vested in these several departments, indicates clearly that there are powers appertaining to each of them, which should not in the least degree be commingled, but should be forever kept separate and distinct: that there should be no infringement by one department upon another, but that each should be kept, according to the Constitution and laws of our country, and the principles which we avow, within its own proper sphere and limits. We then declare by our Constitution what powers shall appertain to the Executive department: and first, what shall be vested in the Governor, who shall be elected by the qualified voters for Representatives. He must then, as the Executive head of the nation, the chief of that department, as it were the head and sign board of the government, in order that he shall perform the duties pertaining to his office, be invested with certain powers and privileges; some gentlemen might say *prerogatives;* but that is a term which does not belong to the vocabulary of a free people, a word abhorrent to every republican race. These powers and privileges are not to interfere with those of other co-ordinate branches of the government. Then what become his duties? First, he is to see the laws faithfully executed. He as one individual cannot attend to the due execution of the laws, unless you give him certain aids, adjuncts and assistants. The question then arises, what shall be the classification and duties of those aids and assistants. All concur in the opinion that the Governor shall be assisted by a Secretary of State, Treasurer, Comptroller, &c. Then shall we not take into consideration the best means by which they shall be called into his service, to insure the most faithful execution of the laws? We proceed also to invest the Governor with other powers in no degree infringing upon the rights of co ordinate branches. Then if we impose upon him a high responsibility as chief magistrate of the country, standing above all the officers of the State, and commander of the army and navy, and at the same time sworn to see the laws faithfully executed, let us, Mr. Chairman, place in hands the means which will most effectually ensure the due execution of the duties assigned him. Now, I would appeal to the candid consideration of every member upon this floor, if you adopt the plan proposed by the report of the committee. will you not then say to him, "Here are certain duties that you have to perform, and which if you do not perform well you will violate your oath, and be derelict in the fulfilment of your obligations: but yet we will place a man there to shackle you and impose a check upon your conduct." Where is the consistency in this? I would appeal to every one here, if the Governor would not be able to give a higher guarantee for the performance of his duties to the community which he represents, if allowed to employ such agents and assistants as he may think fit, than if they are forced upon him? In the political affairs and relations of society, a state of things may frequently arise, in which the Governor may entertain one set of opinions in relation to public policy and propriety, and the Secretary of State given him as an adjunct or assistant, may entertain different views. Where then do you secure any harmony or concert of action? It is proposed by the gentleman from Liberty that this individual should be foisted upon the Governor by the Legislature; and yet the first declaration which we make here is that the several departments shall be kept separate and distinct. Do you keep them separate and distinct when you give the Legislature the power to fasten upon the Governor a man in whom he can have no confidence? Is not the distinction at once lost when you thus force him to accept in his service, to assist him in the execution of the duties assigned him, one in whose intelligence, virtue and patriotism he has no sort of confidence? Could the public interest and service be possibly in any degree promoted by such a line of conduct! Sir, in the history of all free governments, and particularly in that of our own country, it is found necessary that an eternal jealousy should exist between the different departments of government. The principle was first avowed by our fathers, and they were assuredly wise men when perfecting a form of government which has existed from that period to this, and I hope will exist in its pristine vigor until all this continent of America shall feel the benign influence of the government and principles of our ancestors. Yes, sir: if there is anything sacred in the declaration made by our fathers upon that day so big with interest to the human family, it is this article declaring that the various departments of government shall be forever kept separate and distinct; as the great palladium of our civil and religious liberty. I ask if you will disturb it by allowing such a commingling of the several powers so necessary to the existence of free goveernments. Is there any man upon this floor, who would desire to see this great principle violated and ruined? Then, for my own part, Mr. Chairman, without any remarks whatever as to how far I am a people's man, or how dearly I love them, and I always have believed that I love them much better than they love me, I shall cast my vote in conformity with the principles which I regard as those of civil and religious liberty, principles as sacred as religion itself. Then I would ask, why give this power to the Legislature? Is it that he whom the people may elect to preside over their destinies shall be trammelled and restricted in his conduct by the Legislature? That if a political change should take place in a few months after his election, the Legislature shall be enabled to place a spy over him to note and report all his actions, instead of an assistant to aid him in administering the government? With regard to the people, I presume if all hearts could be tested, that I am as dear a lover of the people as those who have so particularly insisted upon placing all power in their hands. But it occurs to me that by giving the appointing power to the Governor, in this instance, you will be taking nothing from the people. Because, when you declare in your Constitution that he is vested with that power, he is elected with that provision in view; with an eye to the fact that he is invested with the power to call to his aid and support men of the best character and standing for virtue, patriotism, intelligence and capacity in the country. Deprive him of this right, and what is the result? You have a Governor; but he is manacled before you; powerless to do good, though he may have much opportunity of doing injury. If you wish the proper responsibility to exist on the part of your Governor, let it vest at once between him and the people.

Mr. *Lusk* said he should vote for the amendment. He came here a people's man, and wanted them to have all they should have. But at the same time he believed he would be doing them justice, in giving the appointment of the Secretary of State to the Governor, with the consent of the Senate. He thought the appointment belonged to him as the selection of one of his family. If the right of election is left to the people in this case, perhaps they will select a man of different opinions from the Governor; and thus give occasion to confusion and discord in the affairs of government. The people by their election of a Governor manifest their confidence in his ability and disposition to select a Secretary of State, who will fill his office with credit to himself and honor to the Governor.

Mr. *Parker* said that he felt bound to vote against the substitute offered by the gentleman from Liberty. He thought experience had sufficiently proved that this appointment should be in the Governor, with the confirmation of the Senate. Certainly that is a much safer mode of choice than the election by joint ballot of both Houses of the Legislature. In election by joint ballot of the two Houses, there is not that opportunity given to investigate and discuss a man's ability, character and qualifications, which is afforded where the appointment is made by the Governor and discussed in secret session by the Senate. There a free interchange of ideas takes place, and the merits of the individual proposed are freely and fully canvassed. For this reason he should oppose the substitute offered by the gentleman from Liberty. And he would frankly acknowledge that he had belonged to the committee, and raised no objection to the report, yet upon mature reflection he could not approve the method there pointed out. Would it, he would ask, if the election were given to the people, be in the power of the Governor to displace him and fill his place? If not, then in order to keep up the concord and unanimity which should exist in the Executive department, it would be the safest course for the Governor to nominate and the Senate to confirm. If he should make an improper selection, it would be in the power of the Senate to reject; and then it is made the duty of the Governor again to nominate, and so until a man shall be chosen who will meet their views, possessing the qualifications, character and capacity necessary in a Secretary of State.

The substitute was rejected, and the amendment adopted.
Question on the adoption of the section as amended.

Mr. *Bache* said that before the question was taken, he would move to strike out that portion defining the period of continuance in office, so as to provide that he shall continue in office "during the Governor's continuance in office, if he shall so long behave himself well." Because if the Governor should go out of office before the end of the four years, and the Secretary of State should still remain in office, the original relationship would cease to exist. The object was that the Secretary of State should be in for the same term with the Governor.

Mr. *Van Zandt* moved to strike out the latter clause. Accepted by Mr. Bache.

Mr. *Hemphill* suggested to make it read simply "there shall be a Secretary of State, who shall be appointed by the Governor."

On motion of Mr. Van Zandt, the committee rose, &c., and
The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Saturday, July 19th, 1845.

The Convention met pursuant to adjournment.
Prayer by the Chaplain.
On motion of Mr. Gage, Mr. Bagby was added to the committee on the Legislative Department.
On motion of Mr. Gage, the Convention took up the

ORDERS OF THE DAY.

The report of the committee on the Executive Department being first in order, was taken up.

On motion of Mr. Jones, it was laid on the table for the present.

The resolution of Mr. Hogg of the 17th inst., in relation to the apportionment of Representation, was taken up and referred to the committee on the Legislative department.

The Resolution of Mr. Jones, in relation to the apportionment of Representation, was taken up, and on motion of Mr. Moore, referred to the committee on the Legislative department.

The resolution of Mr. Wright, requiring the committee on General Provisions to enquire into the expediency of establishing Judicial counties, was taken up and referred to the committee on the Judiciary.

The resolution of Mr. Lipscomb, requiring the committee on General Provisions to enquire into the expediency of authorising the Legislature to protect by law, from forced sale, a certain portion of the property of all heads of families, was taken up and adopted.

The resolution of Mr. Forbes, of the 16th inst., requiring the committee on General Provisions to enquire into the expediency of prohibiting the passage of any law taking away the legal remedy for the collection of debts, &c., was taken up and adopted.

The report of the committee on Education, of the 16th inst., was taken up, and,

On motion of Mr. Young, 500 copies were ordered to be printed.

Mr. Jones moved that six additional members be added to the committee on the Legislative department, viz, two from the eastern, two from the middle and two from the western sections of the country: which motion was carried.

Mr. Davis offered the following resolution:

Resolved, That the committee on General Provisions be requested to take into consideration the propriety and expediency of authorising the first session of the State Legislature, to divide such counties as the convenience of the citizens require.

Which was read, and,

On motion of Mr. Davis, the rule was suspended, and the resolution adopted.

Mr. Caldwell, from the committee on the State of the Nation, made the following report:

The committee to whom was referred the various propositions for a division of the General Land Office, have had the same under consideration, and directed me to report the following article, and recommend the passage thereof.

(Signed,) JOHN CALDWELL, Chairman.

Which is as follows:

That the Legislature shall, as early as practicable, establish two Land Offices, one in the eastern and the other in the western section of the State.

Which report was read and laid on the table, to come up among the orders of the day.

On motion of Mr. Moore, the report of the committee on the Executive department was taken up: and

On motion of Mr. Young, the Convention resolved itself into a committee of the whole on the said report: Mr. Scott in the chair.

The amendment of the gentleman from Galveston was before the committee: in section 14th to strike out "four years," and insert "if so long he shall behave himself well."

Mr. Forbes suggested to insert "during the term of service of the Governor elect."

An amendment of this character was adopted.

On motion of Mr. President Rusk, the 15th section was stricken out.

In the 16th section, Mr. *Forbes* proposed to amend by adding "no bill of a general character shall be sent to the Governor for his approval within the last five days next preceding the adjournment of the Legislature."

The object, he said, was to prevent an evil, which no doubt had been witnessed to a great extent by every member present. It has been the practice heretofore, instead of taking up the business of a general character, to proceed with private bills till near the end of the session. Bills of a general character are then taken up and forced through the House in a very short time. And bills required to be signed by the Governor, are frequently kept by him in his pocket in order to avoid responsibility.

Amendment rejected.

Mr. *Caldwell* moved to strike out "five," and insert "three.,' Rejected.

Mr. *Young* moved to substitute "two-thirds" for "a majority."

Mr. *Moore* said, I hope, Mr. Chairman, the motion will prevail. No doubt the veto power has been sometimes exercised for injury: but much more often for good. Sometimes the very safety of a State may depend upon the beneficial exercise of this privilege by the Executive. In examining the opposition to this measure, you can trace it back to the time when the lamented Andrew Jackson first vetoed the United States Bank. The cry of the party then opposed to that measure rang from one end of the Union to the other, from Maine to Georgia, and from Georgia to the Sabine: that it had been exercised for tyrannical purposes: that it would be productive of evils incalculable. The cry increased and spread until the election of Gen Harrison. Then the party opposed to it exerted every influence to destroy the veto: and from that time to this, the cry is still widening and strengthening. I believe, however, that after a few years it will die away, and the party now opposed to this measure will again sustain it. We find that during a long term of fifty years this power has been exerted only for the common good, and has been sustained by all parties. Why now in the heat of passion discard a principle sanctioned by long experience, because the President of this Republic, as people suppose, has sometimes exercised this power for injury, but perhaps more frequently good? The war, it has been said, has begun; but I did not expect it would have begun against this great democratic principle. Where do you find the opposition to the veto power? Not in the democracy: but in the party now opposed to democratic principles. It has been observed that there are no parties here. I am glad there are none. I hope in the whole of this State we shall have but one uniform party: that democratic principles will prevail throughout the land. I believe the consideration that it is that party to whom we are chiefly indebted for annexation, will induce the great body of the people to sustain their measures, and one of them which they have perhaps preferred to all others, and most fully and heartily sustiend, has been this veto power, as exercised by the President of the U. States. It may be that our President has sometimes exercised it injuriously: but while I may regret the fact, I will not impugn his motives. He has been sustained by the confidence of the people, and I believe that in his exercise of that power, he has intended to carry out the great principles which tend to the benefit of the country at large. I will not impugn his motives; they may have been bad, very bad; but I cannot search the human heart to ascertain whether he has been actuated by private malice or by the desire of public good. I hope therefore, that those who really wish to sustain the prerogatives of the Executive, to preserve that great check to legislative encroachment, will support this provision. The history of this Republic and of all past time proves that the Legislature is constantly encroaching upon the Executive. Our fathers of the American Revolution, in giving the President of the country the right to exercise the veto power, thought that the time might come when the salvation of the country might depend on its exercise as a check to rash, improvident and indiscreet legislation. Profiting by the lessons of the past, I hope we shall retain it in our Constitution until from its frequent abuse, the people shall find it necessary by an amendment of this instrument to abolish it.

Mr. *Horton* said he rose for the purpose of asking the gentleman from Harris to define clearly the doctrines upon which the democratic party is to act. He came here determined not to be out-democrated by any gentleman in this Convention: and now he was fearful that he should be denounced as a heretic when he should go home. He had thought heretofore that the principles of the democratic party would be best secured by permitting the majority to govern. But it would seem, if he understood the gentleman's argument correctly, that the minority have to rule. He merely rose for the purpose of calling upon the gentleman to elucidate the doctrines of the democratic party, as with that party he had to act, and if consonant with his feelings would act with him with a great deal of pleasure.

Mr. *Lipscomb* said he had always believed it inconsistent with the principles of all free governments, that the will of the majority when fully expressed, should be controlled by the exercise of this power. Considering it anti democratic, as indeed striking at the fundamental principles of a democratic form of government, he should therefore oppose it. He believed the veto power to be a wholesome and salutary restraint upon hasty legislation, but when the majority of both Houses of the Legislature deliberately pass and adopt a measure, he regarded it as contrary to the spirit of free institutions to allow the Governor to control the free exercise of their will.

Mr. *Davis* said that in reporting this provision the committee did not look to the principles of democracy, nor to those of aristocracy; nor to what had been done by this Governor or the other, by the President of the United States or the President of this Republic. But this was the extent to which they thought the veto power should go, and after mature deliberation and reflection they thought this provision would give it sufficient strength. It requires only a majority of the whole of the members elected to pass a bill over the head of the Executive, for it to become a law. He could not himself discover that this was anti democratic. Another consideration: the influence of the Governor could and would be very powerful in a legislative body. If the Governor sends such a bill with his veto and the reasons for it, and then in opposition to his reasons and his influence, the majority of the whole number of members think proper to pass it, he thought such should be the law.

Mr. *Baylor* said he hoped the motion made by the gentleman from Red River, and sustained by the gentleman from Harris, would not prevail. In the few remarks which he contemplated making, he should abstain entirely from reviewing the conduct of individuals, or the history of the past in connection with this subject; because he could not well do so perhaps without reflecting to some extent upon persons now sleeping with the illustrious dead. But it was sufficient for his purpose to remark that whether it had been exercised properly or improperly, is a matter of little moment. Certain it is, there has been a great deal of discontent in the United States from this source, as well as in our young, interesting and beautiful Republic. If we retain this feature in our Constitution, the same discontents will necessarily arise: and he thought it the duty of this body as far as possible to prevent these public disturbances, if they can wisely do so. Why has this feature been contained in every Constitution almost in the world? If we examine the history of the veto power and trace it to the country from which we take it, we shall find that in England the King has the absolute control over the Legislature of that country. If he vetoes any bill, there is no power in the legislative branch of the government ever to pass it. Our fathers in reflecting upon this subject, thought they had gone a great way from that arbitrary principle by permitting the Legislature to pass it by a majority of two-thirds. This departure from the great principle as maintained in England was thought sufficiently democratic. But it would seem that our experience proves it well calculated to bring about great discontent in the community. And it is from this idea, that it permits the minority to govern. Our people are so familiar with the principles of democratic government that if the will of the majority is checked or controlled by any power, it must create dissention and dissatisfaction. Now every well regulated government must have its checks and balances. So that if the Legislative department, in the heat of party excitement, for example, shall be hurried away to pass a law prejudicial to the community, or leap over the barriers and boundary lines of the Constitution itself, there shall be some controlling check to the hasty and ill-devised offspring of popular excitement, or strong and irritated party feeling. This controlling power is given to the Executive And so if the Governor act improperly, he can be impeached, and thus the Legislature becomes in turn a check upon the Executive. Now it is to be remarked that, according to the scheme contemplated, you are to place in the hands of the Governor a great amount of power. He is to appoint the Judges, the Secretary of State, the Attorney General and the District Attorneys. If you give him this large amount of political power, what will be the result? He may disapprove every wholesome and salutary law which may be passed by the Legislature. With the political power which is to be placed in his hands, with the powerful patronage that he will possess, and with this power contemplated by the gentleman from Red River, instead of the Legislature, the immediate representatives of the people, having their way, the Executive will completely control the whole legislation of the country. In Alabama, the Governor has little or no power: he is almost a cypher under the Constitution of that State: and yet its framers have thought it wise that he should have no more power than it is contemplated to give him in the section as it now stands. Here, a majority of *all* the members elected must sanction the bill, and not a bare majority, not a mere quorum. It seemed to him that this was striking the true medium, the just medium between the extremes. He had heard Executives make a remark of this kind, that they considered themselves as constituting one-third of the legislative power of the country. Give him the contemplated power, and you make him at least one-third of your Legislature. It is at war with one of the great fundamental principles of free government. For himself, he made no pretensions to democracy; he thought that actions speak louder than words. He should vote against the motion.

Mr. President *Rusk* regretted to differ with the gentleman from Fayette; but he did differ most materially. He did not think the veto power was ever considered an active power of legislation. It would be found in a great number of the States which had adopted it, that it was rather intended as a check, a power only to be exercised negatively. Whatever power you give the veto, you give no power of originating. In order to carry on government, it is necessary that power should be somewhere; and you have vested it in the Legislative department. This power of the veto has probably been frequently abused, yet it is given, as he thought, wisely. Is it not better to submit to the anticipation of evils, than to forego a certain and important benefit, The Legislature, in a time of high excitement, may pass a law calculated to produce great injury. With this power, the Governor can interpose his check. He takes the heavy responsibility of coming out in opposition to the majority of the Representatives of the people. And the question then arises what portion of the Representatives shall be sufficient to pass a measure over his head. It seemed to him that the experience of the past had given the preference to the motion of the gentleman from Red River. If he should veto a salutary law from caprice, is it not extremely improbable that one-third of the delegates of the people, elected by them upon democratic principles, should be found to sustain him?. The object of this provision is to prevent hasty legislation. The fact is notorious, that one of the greatest evils of a democracy or republican government, is legislating too much. The people, are governed too much; there are too many laws. The history of all such governments clearly shows it, and ours in particular, and will do it for years to come. In the various acquisitions of population that we shall have from different parts, we shall have men of different opinions and different sentiments upon nearly all subjects. Then is it not best to adopt this provision which is found in the Constitution of the U. States, in those of many of the States, and in our own present one. This power has been often improperly used, and perhaps in no other country more than in Texas. But was this an argument against it? He thought not. So far as Democracy and Federalism had been brought to bear, he thought they had nothing to do with the question. He regretted to see a disposition here to read men into the Democratic ranks, or out of them. He believed that all were for Polk and Dallas, and they are the acknowledged leaders of the Democratic party. The first cry raised against the exercise of this power was that against General Jackson by Mr. Clay and his friends, with the object of breaking down that great man. Is there not a necessity for checking the legislative power? Is it not better to retain a law generally understood, if a little bad, than to keep continually changing the law? Man is such an animal, that if you trust him with power, he will sometimes abuse it. But if you take away power from the hands of every officer who may possibly abuse it, you will take away all power from all governments. He should vote with the gentleman from Red River, and in doing so, he did not believe he should place himself without the pale of the Democratic party.

Mr. *Hemphill* said he felt bound to support the propositions of the gentleman from Red River. It is a truth that every member of this body will admit, that unless there had been a similar provision in the Constitution of the United States, there would not have been one of them upon this floor, for the purpose for which they are now assembled. Had not John Tyler vetoed the Bank, and thereby thrown himself out of the party which elected him, the Whig party would have been now triumphant, our friends would have been prostrated, and it would have been impossible for any treaty on the subject of annexation to have taken place. He was not in favor of introducing novelties in our Constitution, but wished to model it as nearly as possible upon that of the U. States. This power has worked well, and he would defy any gentleman to produce any one instance of its exercise on the part of the President of the United States, which had not been advantageous to the people of the country, or which had not tended to support the people against the usurpation of the government. Had this power not existed, the system of internal improvement would now have been fastened down upon the country; the land would have been filled with banks, and the party in power would have been for banks instead of the party in the opposition. We talk of incorporating in our Constitution a provision against banks; had the veto not been exercised, it would have been the received doctrince here to-day that banks are essential to every government. He thought the gentleman from Nacogdoches had sufficiently shewn the object of the veto power to be to prevent encroachment on the Executive, and to check hasty and ill advised legislation He considered however that that power if given to the Governor would be futile; that parties would be so well organized in ten years that not one man could be changed by the reasons of the Governor. He would a great deal rather, if the Convention seemed so disposed, that no provision of this kind should be introduced at all, so as to throw the whole responsibility of legislation upon the legislative department.

Mr. *Mayfield* said: I feel impelled, Mr. Chairman, to explain briefly the reasons which will control my vote. The true question for solution is this, whether experience in legislation and the wisdom of the age establish the fact, that there exists a necessity for checks upon legislation. If not, any provision upon this subject would be useless. If, however, in consulting impartial history and investigating the subject coolly and dispassionately, without regard to individual cases of abuse of this power, we should come to the conclusion that checks upon legislation wholesome and salutary in themselves, I see no reason for departure from what past experience may have established. Though we find it one of the fundamental principles of the Constitution that the several departments are to be forever kept separate and distinct, it is one, among its first provisions where it speaks of the Executive branch of the government, that in the event that the Governor shall act improperly or dishonestly, a check is placed over him by authorizing the Legislature itself to hold him to accountability, subjecting him to impeachment. Then we find that in order to render government practicable upon the principles upon which we seek to establish it, it is necessary that each of the departments should have a check or control over the licentiousness of the others. It might be contended that there would be some degree of conflict and collision from subjecting the Governor to be controlled, punished or impeached by the Legislature; but the good order of society requires that he should be amenable to some tribunal, and nothing has been yet devised by the wisdom of man more suitable than the method pointed out in the Constitution. The next inquiry which arises is, in the event that the Legislature in times of especial excitement should transcend the rights and powers appertaining to that department, what check will you place over their wild, hasty and inconsiderate legislation? It is conceded, I believe, that such a state of things may arise, when the public safety may require some check upon this kind of legislation; and it is therefore wise to provide for it. In whose hands then shall we place that election? I would appeal to every gentleman here if it could be better placed, than, with proper restrictions, in the hands of the Governor, the Chief Magistrate of the State, whose province it is to see to the due execution of the laws and attend to the public welfare, who is placed there in part to aid and assist in legislation by recommending such measures as may best ensure the public prosperity and happiness. Could you place it in better hands than those of the Governor, called to his station for his experience and knowledge of the true condition of the country, who is supposed at all times to have an eye single to his country's good and his country's glory? This power must rest somewhere, and it seems to me, the only question is, what restrictions will you place upon its exercise? Let the provision stand as reported by the commmittee, and it appears to me wholly nugatory; in fact, it amounts to nothing. For myself, I feel called upon here to cast a vote upon a question of vital importance to the country; and whatever opinions I may have entertained with regard to the abuse of this power in former times, either in the government of the United States or in that of Texas, I feel called upon to discard them, and cast my vote with an eye to that state of things which may arise to render the use of it necessary in times to come. It is manifest that there must be a check some where or other. The provision that certain laws shall not be passed except by a majority of two-thirds of the Legislature, adopted in some of the States, may be said to do violence to a great Democratic doctrine, in taking from the majority the right to govern. But experience has clearly demonstrated its wisdom. Some of the States have adopted the provision that particular bills, those relating to the expenditure of public moneys, should pass by a majority of two-thirds of both Houses. This is intended as a check to guard against an improvident expenditure of the public funds. Yet, it is taking from the majority the right of controlling in these matters. The case may arise, when violence may be done to the Constitution by the Legislature; its salutary provisions may be overlooked or disregarded in the passion and hurry of the moment, And whenever on an occasion of tumult and excitement, the hasty action of the Legislature may threaten the Constitution itself, intended to guard and protect us in the possession and enjoyment of our property and our political rights, should there not be some check, some power to call upon them at least to pause for a moment before doing violence to that sacred instrument; to persuade them to retrace their steps, and act upon the principles necessary to the good order and welfare of society?

Mr. *Baylor* said: It had been stated that the veto was a merely negative power. True, but this negative power may be used, and may bring about the most disastrous consequences to society. And so long as the sentiment is fixed and ingrained in the minds of the American people, that the majority should control, whenever their opinions are settled upon due deliberation, so long you may expect discontent when you place this power in the hands of the Executive. It is not only important that wise and good laws should be enacted, but that they should be satisfactory to the people. They will then obey the more cheerfully; they will acquiesce in them more readily. But when they see their wishes thwarted, as they must necessarily be, if you place so large an amount of power in the Executive, there will forever be dissatisfaction in the public mind.

Mr. *Van Zandt* said: It has been remarked, Mr. Chairman, that power is dangerous. According to my impressions there is no maxim more correct; and the only way to disarm it, and free it from a dangerous tendency, is to divide it. If you vest the two Houses of the Legislature, as proposed by the committee, with the sole unchecked power of enacting laws, it occurs to me that this power becomes dangerous; and that it is calculated to produce more disorganization and confusion in the country than any power which you are likely to bestow upon the Governor. As remarked by the gentleman from Fayette, in this country as in all others, instances are not uncommon, where bills of a questionable or injurious tendency, have been presented, and passed through both Houses in the hurry of the moment, without being duly reflected upon. The Constitution provides that no bill shall become a law until it shall have been read on three several days in each House, and passed by the same, unless in cases of emergency the rule shall be suspended by a vote of two-thirds of the members of the House where it originated. I will appeal to gentlemen upon this floor to say how often the object of that provision has been evaded, and measures requiring no slight degree of deliberation, have been taken up, and rushed precipitately through the House. The veto power has indeed been the safeguard of the country. Perhaps in a few instances, principally of a private character, it may have been improperly exercised; but I would ask gentlemen here to point to a single act of Congress vetoed by the Executive, which if carried out would have resulted beneficially. Or, on the other hand, what injury has ever been inflicted by the exercise of this power? On the contrary it is acknowledged by all parties that the existence of the veto power in this government has been the salvation of the country. Each and every Executive who has occupied the chair of State has upon some occasions exercised this power, and to the best of my recollection, with regard to matters of a general character, I know of no case of its improper exercise. Cases of an individual character, where perhaps it may have been misemployed from personal prejudice, I pretend not to inquire into. But in those pertaining to the public interest, in those of enactments to preserve the supreme law of the land, I know of no such instance. If you travel back to the United States, I ask upon what occasion has it's exercise proved injurious there? It is true that discontent has prevailed to some extent with regard to it; but in what portion of that Union has it prevailed? In the great majority, or in the party now in the minority, and which has been in the minority for the last twenty-five years, except upon one or two occasions? Though I believe it unnecessary here to discuss the relations of parties in the United States, and avoid it as much as any one, yet I believe it not improper to allude to the great principles distinguishing those parties. A further restriction of the veto power is now a favorite principle of the Whig party. I believe however, that the great majority of the people have seen that it should not be restricted; but that its exercise has been wise and salutary; that it has produced good, or rather has prevented much evil. Gentlemen say that by requiring a majority of two-thirds you strike at the fundamental principles of free governments. This I deny. You do not thereby arm the Executive with the power to introduce a measure, nor do you give him the force and effect of one-third of the Legislature, except as a negative power. They say it is the great principle of all Republican governments that the majority shall rule. I recollect well a conversation with that distinguished man, Mr. Calhoun, in which he entered at length into the discussion of the veto power. He said that there was no tyranny known to the civilized world greater than that of the unrestricted power, a simple majority; and that he could no where find the reason why forty nine men should have the right unrestrictedly to govern forty eight. We have had instances in this country where twenty-one members have disfranchised eighteen or twenty representing twice the population represented by those twenty one. Then it is not universally a rule of republicanism that a simple majority has the unrestricted right to force its edicts down upon a less number. Gentlemen fear that if you give to the Executive the power of the veto the people will be discontented: and argue that if you adopt a safe principle and let a simple majority pass a law, if the people are dissatisfied, at the next Legislature the law will be repealed. I would ask if this principle should govern us, a principle which would require a change of the laws every year? It has been frequently the case that our own Congress has passed a law at one session, repealed it the next, and again re instated it the following year. If a law is of so wise and wholesome a character that the public welfare imperiously demands its passage, its necessity will be evidently apparent to two-thirds of the Legislature If, on the contrary, it is of so doubtful a character that it can obtain only a simple majority of one or two votes, I say the people should be again called to act upon it before it should become a law. If a wise law is postponed for the moment, at the next election the question goes before the people. Where then the difficulty if right in passing the law at a subsequent session? If it is one of such permanent necessity, where the evil in referring it to the second sober thought of the people? It is rarely the case that any law requires to be passed so early that it cannot wait another session of the Legislature. But as many evils may result from hasty legislation, and power is more beneficial and less dangerous when divided, and as each department is designed to operate as a check over the other, I think it better to adopt the amendment of the gentleman from Red River, by which we shall secure all the benefit of wholesome laws, and avoid the dangers consequent upon crude and ill digested legislation.

Mr. *Darnell* thought the position assumed by the gentleman from Harrison certainly not a proper one. What are the powers properly belonging to the Governor? That he shall see the laws faithfully executed; he swears to support the Constitution: and if a law should pass the Legislature in his opinion unconstitutional, it is his duty to veto it. Gentlemen contend that laws may be passed by the Legislature, and should be vetoed by the Governor, which may be injurious to the community or State. But how are they known to be injurious? Have they been in operation: have their effects been felt by the people? Not at all. But the Governor, one individual puts at defiance the majority of the people represented in the Legislature. It is placing a great deal of power in one individual, that his opinions are to govern in contradiction of those of the majority of the people of Texas.

Mr. *Hemphill* said that he believed the idea that a majority should always govern was one of these fallacious ideas about on a par with the doctrine that all men are born free and equal: one of the things which you see in books, but which are scarcely ever reduced to practice.—Take the history of the government of the United States, or that of any State. You will find it seldom the case that a popular majority governs. For instance, in regard to the election of President of the United States, you find New York, with a voting population of 500,000 giving about 36 votes; Delaware with but 10,000, giving three votes; and South Carolina with 6,000, giving her one vote, and so with other States. What then becomes of your majority? In truth the majority seldom prevails, because there is some ingredient every where mixed up with numbers. The very purpose of a Constitution is to take power from the majority in order to protect the minority: the minority can protect itself. Whatever basis of representation we may adopt, in ten years there will have been so many changes on account of the different ratio of increase in the population of the various sections of the country, that the majority will not rule. In 1836, it was perhaps based upon population, but in consequence of depopulation many of our members of Congress have been for some time representing not population, but territory. In the State from which I came, the majority does not govern, because wealth and numbers are equally represented there. Unless you take the vote by general ticket popular majorities cannot and will not prevail.

Mr. *Davis* said that all these arguments did not prove to him that the majority should not rule. Our government is based on the principle that the majority should rule, and if thay do not rule it is an objection to the operation of the government. As regards the power of the Governor, it is contended that it is not orthodox democracy to cut down the veto power. I would ask gentlemen if it is democratic to give the Governor the power to paralize the arm of legislation? Give him this power and you make him dictator at once.

Mr. President *Rusk* said, it is the majority of the legislature that pass a law, and not a majority of the people So far as the Governor is concerned, he is elected by a majority of the people. The members of the Legislature are elected by the voters of the different counties. If the Legislature were chosen by a majority of the whole number of votes of the people, there might be something in the argument.

Mr. *Baylor* said: something has been said concerning parties in the United States. Go back to the contest between Jefferson and the elder Adams One of the most interesting features of the two parties was this: The elder Adams and the party he drew around him were endeavoring to do—what? To concentrate all power and government in the

United States in the hands of the Executive; to make a strong and energetic government little short of a monarchy. Mr. Jefferson, who headed what was then called the democratic party, warred against these doctrines. After a while, in the history of parties when General Jackson came into power, he showed himself inclined to a pretty strong exercise of Executive power. In the day of Adams and Jefferson, to be in favor of the Executive prerogative was to be a Federalist: while at a later time, those attached to General Jackson and his opinions were the Simon Pure Democracy of the first water. What made Democracy under Jefferson, made Federalism under Jackson. For my part, I could never perceive how the same set of opinions at one period could make a man a Federalist, and at another a Democrat. But principles are eternal, and the wish to concentrate in the hands of any single man too large an amount of power, is a great and distinguishing feature in the principles of politics, no matter under whose administration. I have thought myself, that with the patronage of the Governor, if you clothe him with this additional power, it would be placing too much power in his hands, and if this opinion be Whiggery or Federalism, then I am a Whig or a Federalist.

Mr. *Brown* said that he was in favor of the section as it stood. He was unwilling that the Executive should participate in any manner in the legislative powers of the country. From the historical account of the veto power, it took its rise, as will be recollected, in the Constitution of Great Britain. In that country, whose Parliament answers to our Legislature, it consists of three powers: the King, the Lords, and the House of Commons. It is the principle of that government that laws shall be passed by the Parliament, and that the King shall participate therein. Hence this power contained in the Constitution of the United States. It was no doubt engrafted there at first from an erroneous impression. Its framers had no simple republican Constitution before them. The Declaration of Independence was recent; a few State Constitutions had been framed: but they had no precedent to guide them in the formation of that instrument, and no materials except such as were supplied by their individual information and experience. And if I understood its history correctly, the veto power was engrafted then with the idea, that the legislature having all powers would be making constant aggressions on the Executive; and that he should have this in order to repel them. But, sir, the power has been extended far beyond this: it has been applied in many cases not appropriate for its exercise. And I think there is a wide distinction between the power of the Executive under a State Government and under the General Government.—In a State Government I think this power should be limited. In great national concerns, an act of great importance may be done irrevocably, without some such check. The government of the United States has its relations and correspondence with other powers; and an act may go forth and have its full effect upon these relations, with no power to rectify it. Not so with a State. If the Legislature err, there is a remedy through the people. The cases are totally dissimilar. And the principle perhaps would never have been incorporated into the Constitution of the United States, if it had been foreseen, that so far from the Legislative Department trespassing upon the Executive, the Executive would be eternally intruding upon the Legislature. None will deny that the Executive has made wide and deep inroads upon the power of the Legislature. Now whether the members of the Legislature represent the majority of the people or not, is not for the Executive to determine. It is not yet settled in this body whether we shall have our elections by general ticket. However, the Executive has no means of ascertaining the public will, except as that will is expressed through the representatives and oracles of the people. We are not a Democracy, but a Republic, in which the will of the people is conveyed through their representatives standing in the place and lieu of the people. If the Governor wants any expression of their will, he has to look to their representatives. He was unwilling that the Executive should share in the Legislative power of the country. It is contrary to the principles of our government, though in conformity with the institutions of Great Britain, where the principle is openly and palpably asserted that the Executive forms a branch of the Parliament. I know not what the distinction between popular majorities and majorities of the two Houses may be. It would be a very wrong thing for this Convention to fix a principle by which the minority of the nation should have prevalence and control over the majority in our Legislative assemblies. We have plainly asserted and declared in the charter of our liberties, that the several departments shall be kept distinct; and I could never give any assent to any provision, the effect of which would be to confer enormous legislative powers upon the Executive.

The amendment was adopted.

Mr. Love moved to strike out the words "unless the Legislature, by their adjournment, prevent its return, in which case it shall not be a law;" and insert "every bill not returned to the House in which it originated shall become a law, and shall have the same force and effect as if signed by the Governor." Amendment adopted.

On motion of Mr. Runnels, the 18th, 19th and 20th sections were stricken out.

In section 21st, Mr. Moore moved to strike out "always." Stricken out.

In section 23d, providing the mode of election of State Treasurer and Comptroller, Mr. Runnels moved to amend by inserting "joint ballot of both Houses of the Legislature," in place of "qualified electors."—Adopted.

The 24th section was stricken out.

In the 2d section, under the head of "militia," Mr. Young proposes to insert as a substitute for the latter clause, "shall furnish a substitute."

Mr. *Moore* said there were several denominations of Christians who held it as one of the doctrines of the Redeemer, that war shall prevail no more. The sect of Quakers are very numerous in the United States; yet it is well known that during the war of the revolution, they contributed as freely to sustain the soldiers in fighting the battles of the country as any other people. No injury could result from respecting the rights of those who entertain conscientious scruples on this subject.

Mr. *Young* said that the reason why he was unwilling to withdraw the amendment was this: we might be placed in many situations where paying an equivalent in money, horses or cattle, would not answer the same purpose as furnishing a substitute. And there might be many persons also, we may anticipate, who might probably find it convenient on some occasions, to throw themselves upon their conscientious scruples.

Mr. President *Rusk* said he was not disposed to interfere with any man's conscientious scruples; but these were of such a character as to strike directly at the foundation of governments. If such principles had prevailed with the majority of a people of Texas, we should not now have been in existence as a Republic. A sect of Mormons may hereafter arise here, who may claim conscientiously to believe that they ought not to pay taxes; and on the same principle they may demand our protection.

He had an objection to this section and all which follow. He thought there was no necessity for including sections of this sort in the Constitution. The 1st section gives the Legislature all the authority over the subject which the Convention has now. And this 2d section does not define the mode of ascertaining who does entertain conscientious scruples. He would leave it to the Legislature to lay down the principles upon which to determine this matter.

Mr. *Henderson* said that within the last few days he had reflected somewhat upon the subject, and had endeavored to gain his own consent to strike out all sections of this sort which may appear in our Constitution. But he could not gain that consent. When he saw that, in other points this Convention had endeavored to protect the consciences of all men, he could not now make an exception to the rule. If it should be the case that any man should refuse to bear arms from cowardice, he thought that he had better be excused, because he would make but a bad soldier. If on the other hand, he was influenced by scruples of conscience, we should excuse him: nor should we allow a man to contribute to the support of a war, if he thinks it against his conscience or religion. He had seen in his own native State an illustration of the hardship which in matters of this kind might bear heavily upon a certain class of religionists. He had seen a tax laid upon the Quakers, which they regarded as an oppressive interference with their consciences; forcing them to contribute to the support of a war which they believed they were not allowed by their religion to interfere in. He had seen them apply to the Legislature for relief, by a committee; had seen their petition rejected, and seen them depart with an expression upon their faces which would strongly excite the sympathies of any man. A single instance of this kind, would have induced him to vote against any such compulsory provision.

The amendment was rejected.

The 4th. 5th and 6th sections were stricken out.

On motion of Mr. Van Zandt, the Committee rose, reported the various amendments, and asked leave to be discharged. Report adopted, and the Convention adjourned until Monday morning, 8 o'clock.

Monday, July 21st, 1845.

The Convention met pursuant to adjournment.

The Chaplain addressed the Throne of Grace, as follows:

O thou whose presence is fullness of joy, and at whose right hand are pleasures forever more. Before thee this morning, we present us in order to make prayer and supplication. We would acknowledge our waywardness and backwardness, and our short comings. We would pray thee to heal all our backslidings, and lift upon us the light of thy countenance, reconciled, that we may be enabled to see with thy light, and walk in the light as thou art in the light. Prepare us for each and every event that may await us: help us to do good and get good here on earth. We pray thee to grant thy wisdom to this Convention, that they may be enabled while in session, to transact the business of this nation with an eye single to thy glory Grant thy blessings to rest upon their labors, that they may all redound to thy glory, and the best interests of the community. We pray thee, Holy Father, to regard with us all that we should pray for every where—save them that persist, succor the distressed and relieve the oppressed: bind up the broken hearted: be a father to the fatherless, and a husband to the widow. And when we shall have done with the things of time and sense, bring us to thy everlasting kingdom—through Christ our Redeemer, Amen.

Mr. Lewis presented the credentials of Charles B. Stewart, claiming a seat in this body, from the county of Montgomery, which were referred to the committee on Privileges and Elections.

The President announced the additional members of the committee on the Legislative Department, contemplated by the resolution of Mr. Jones, of the 19th instant, which are as follows:—Messrs. Gage, Tarrant, Lewis, Armstrong of R, Howard and Horton.

The amendments of the committee of the whole on the Executive Department, being first in order, were taken up.

The first amendment to strike out "General Assembly" wherever it occurs and insert "Legislature," was adopted.

In the substitute of the committee for the 3d section, Mr. Jones moved to strike out the words "highest number of votes," and insert the words "being constitutionally eligible;" which was lost.

On motion of Mr. Runnels, the words "being constitutionally eligible" were inserted after the words "highest number of votes."

The substitute of the committee for the 3d section then read as follows:

"The returns of every election for Governor, until otherwise provided by law, shall be made out, sealed up and transmitted to the seat of government, and directed to the Speaker of the House of Representatives, who shall, during the first week of the session of the Legislature thereafter, open and publish them in the presence of both Houses of the Legislature; the person having the highest number of votes, being constitutionally eligible, shall be declared by the Speaker, under the direction of the Legislature, to be the Governor; but if two or more persons shall have the highest and an equal number of votes. one of them shall be immediately chosen Governor by joint vote of both Houses of the Legislature: contested elections for Governor shall be determined by both Houses of the Legislature:" which substitute was adopted.

In the 4th section the amendment of the committee was adopted—strike out the word "his" in 2d line, and insert before word "time," the word "regular"—strike out "native" in 5th line. The ayes and noes were called for on striking out, and were as follows:

Ayes—Messrs President, Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Brown, Clark, Cunningham. Cunney, Darnell, Evans, Everts, Forbes, Gage, Hemphill, Hicks, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lumpkin. Lusk, Lipscomb, Love, Mayfield. Bagby, Moore, Navarro, Parker, Power, Raines, Scott, Smyth, Van Zandt, White and Wood—43.

Noes—Messrs. Anderson, Burroughs, Caldwell. Davis, Hogg. Lewis, McGowan, McNeill, Miller, Runnels, Tarrant, Wright and Young—13.

Amendment adopted.

A further amendment of the committee to the 4th section was adopted, which reads as follows: "and shall have resided in the same four years, immediately preceding his election."

In section 5th the following amendment of the committee was adopted: "The first Governor shall receive an annual salary of two thousand dollars and no more."

The amendment of the committee to the 8th section is as follows:—strike out "or at a different place if that shall have become, since their last adjournment, dangerous from an enemy or from contagious disorders," and insert "or at a different place if that should be in the actual possession of a public enemy," which was adopted by the following vote:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Caldwell, Cunningham, Darnell, Forbes, Gage, Hemphill, Henderson, Horton, Holland, Howard, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Lumpkin, Lipscomb, Mayfield, Bagby, Miller, Navarro, Power, Runnels, Tarrant, Van Zandt, White and Wright—34.

Noes—Messrs Brashear, Burroughs, Clark, Cuney, Davis, Evans, Everts, Hicks, Hogg, Jones, Lewis, Lusk, McGowan, McNeill, Moore, Parker, Raines, Scott, Smyth, Wood and Young—21.

In section 9th, after the word "information," insert "in writing," in 2d line, which amendment of the committee was adopted.

The amendment of the committee to the 11th section was adopted, and is as follows:

Amend 11th section by striking out all to the word "in" in 4th line and insert "in all criminal cases, except those of treason and impeachment, he shall have power, after conviction, to grant reprieves and pardons, and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures."

The following was offered by the committee, to come in between the 11th and 12th sections:

There shall also be a Lieutenant Governor, who shall be chosen at every election for a Governor by the same persons, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor and whom as Lieutenant Governor.

The Lieutenant Governor shall, by virtue of his office, be President of the Senate, and have, while in committee of the whole, a right to debate and vote on all questions, and when the Senate is equally divided, to give the casting vote.

In case of death, resignation, refusal to serve, or removal from office, or from inability to serve of the Governor, or of his impeachment, or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor, until another be chosen at the periodical election for Governor, and be duly qualified.

or until the Governor impeached or absent shall be acquitted or return.

Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own members as President *pro tempore;* and if, during the vacancy of the office of Governor, the Lieutenant Governor shall die, resign, refuse to serve, or be removed from office, or if he shall be impeached, or absent from the State, the President of the Senate *pro tempore* shall in like manner administer the government until he shall be superçeded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation which shall be allowed to the Speaker of the House of Representatives, and no more, and during the time he administers the government as Governor, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office, and no more.

The President *pro tempore* of the Senate shall, during the time he administers the government, receive in like manner, the same compensation which the Governor would have received, had he been employed in the duties of his office, and no more.

If the Lieutenant Governor shall be required to administer the government, and shall, whilst in such administration die, resign, or be absent from the State during the recess of the Legislature, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a President *pro tempore.*

Mr. Jewett offered the following amendment to the above section: after the words "refusal to serve," insert "or for inability to serve;" which was adopted.

Mr. Davis moved to strike out all that relates to the Lieutenant Governor serving as President of the Senate.

Mr. *Lewis* said if it was determined upon to have a Lieutenant Governor, let him be elected for the special purpose of discharging the duties of Governor in case of necessity. But you invade the rights of the Senate, when you elect him to preside over that body. You take from them a right which they have in many of the States, and which he thought they should certainly have secured to them. And according to this proposition he has a right to mingle in the debates of the committee of the whole. This he thought wrong: because he might thus exercise a very powerful control over the action of that body. Again: this State is in its infancy, and not able to incur any expense which can be dispensed with. And there is no cogent necessity for the creation of a Lieutenant Governor. These were briefly the reasons which would induce him to vote for the motion to strike out: and he should vote against the whole amendment, because he thought the office altogether unnecessary. He was inclined to confine the provisions of this Constitution to the formation of a State government; and was not disposed to imitate the Federal government in all respects. He discovered a disposition here to make everything conformable as far as possible to the system of the Federal government. That government has powers which it would be extremely dangerous to give to a State government. The Executive has too many powers. And he would again suggest that the republican party in the U States has been waging war against the exercise of power in the hands of the Executive.

Mr. *Davis* said he would make but one remark. He should vote for striking out, with a view to make the section as little objectionable as possible; but then he should vote against the amendment. If we are to have a Lieutenant Governor, he was disposed to confine him entirely to the discharge of the duties of Governor. Supposing it possible that the majority of the House might be in favor of the creation of this officer, and at the same time willing to deprive him of the right of presiding over the Senate, he had made the motion.

Mr. *Runnels* said that the object of this amendment to the amendment was to defeat the whole project for the creation of a Lieutenant Governor. It is not as the gentleman from Montgomery stated in his remarks, exclusively in pursuance of the plan of the Federal government of the U. States, that this amendment was proposed. Nor is it the fact that the Federal government is a stronger form of government than that of a State. Many of the States have incorporated this provision in their Constitutions, and all of them have made this officer the President of the Senate. The Federal government is one of limited and expressly delegated powers. The war alluded to between parties in the United States, has been upon the subject of constructive powers; one party advocating a latitudinous construction of the Constitution, and the opposite party advocating the doctrine of literal construction, and denying the right of Congress to exercise any other power than such as may be necessary to carry out those expressly delegated. Gentlemen see an insurmountable objection in the fact that the Senate will be deprived of certain privileges and rights which they should enjoy, particularly in the election of their presiding officer. Now in the formation of a State government, it is certainly within the power of the people to make such a provision, and we are here as the delegates of the people. The creation of this officer, in his opinion, was indispensible for several reasons. An individual would not then be called upon to administer the government, as Governor, who had never been thought of as such by the people. Without it, one county, and that without regard to his duties as Governor, would have the election of this important officer. One county would elect an individual, who would go to the Senate and be elected President of that body, and might be called upon to administer the government for one half the term, or more perhaps, for which the Governor may have been elected. Is it not proper, and necessary, is it not just that the people when they vote for an officer, should have some regard to the position he is to occupy? He might vote for a man for Senator, whom he would not select for Governor. As to the additional expense referred to, it amounted to nothing. It can only at most amount to the expense of one Senator.

Mr. *Jones* said that he believed the gentleman from Brazoria was wrong in his view of the object of the House. He should vote for striking out, but from different motives. He should vote for the office, believing it necessary: but he was opposed to that officer presiding over the Senate, or participating in the action of that body. He believed the Senate might elect a President, with whom they would be much better satisfied, than with an individual elected by the people *en masse*.

Mr. *Mayfield* said that he could not see any objection to making the Lieutenant Governor preside over the deliberations of the Senate. And he thought the position correct which had been assumed by the gentleman from Brazoria, that the officer who is to discharge the duties of Governor should be selected by the people with an eye to fill that vacancy. There did not seem to him to be any validity in the objections urged against his presiding over the Senate. Instead of being an invasion of the rights of the Senate, it appeared to him, that if you give the Lieutenant Governor that position, and allow him to participate in the debates in committee of the whole, you are retaining to the people a check over that body; you are giving the people the right to place one there who from his virtue, patriotism and qualifications, may at all times exercise a wholesome restraint over their deliberations. It is no invasion of their rights; because he is called there by the people. If they see fit to place a monitor over that body, they retain the power at all times to control hasty legislation. The argument is not just, either, as to vesting greater powers in the Executive branch of the government. You simply provide for electing a Lieutenant Governor, whose duties are defined in the amendment. No danger could possibly arise from it, except in the imagination of gentlemen. He should vote for the amendment as it stands.

Mr. *Caldwell* said that he would give his reasons in a few words for the vote he should give on this question. The same reasons that would operate upon some in favor of striking out, would operate upon others and upon him, to keep that portion in. If it is desirable to have a Lieutenant Governor at all, he ought to have some duties conferred upon him; the officer should have sufficient responsibility to draw the attention of people to it, that they may be induced to elect an individual capable and competent to discharge its duties. If you make the office of Lieutenant Governor without a salary, which will certainly prevent a man of capacity from making any exertions to obtain it, and without any duties to perform, you will ascertain that after one or two terms, every one will become careless, and the people will perhaps elect an individual wholly incapable of discharging any duties at all. He had no objection to the Senate or the House either nominating an individual to discharge the duties of Governor, in case of accident or death, an event very likely to occur in this southern climate. He did not think the people would at all like to throw the choice in that case upon either branch of the Legislature. He was satisfied that they would in all cases prefer nominating and electing the individual who is to take the chair of state. Then if they desire it, it is right that they should have it. As to the objections urged by some against permitting that officer to participate in the discussions of the Senate in committee of the whole, they appeared to him very vain and futile. Are gentlemen fearful that body will be composed of such individuals, that they would be afraid to trust them with a man of talents among them, a man capable of reasoning, capable of discussing and elucidating the subjects which come up for their deliberation? As a member of that body, he would be glad of the opportunity to hear such a man there. He ought to be solicited to take a part, instead of being denied the liberty of participating in the discussion. Having no vote, he can exercise no influence except that of argument and reason; and that ought to sway, control and govern at all times.

The ayes and noes were called upon striking out, and were as follow:

Ayes—Messrs. Bache, Burroughs, Davis, Evans, Hogg, Hunter, Irion, Jones, Latimer (of L.) Lewis, Lumpkin, Lipscomb, McGowan, Parker, Raines, White and Wood—17.

Noes—Messrs. President, Anderson, Armstrong (of J.) Armstrong (of R.) Baylor, Brashear, Brown, Caldwell, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Howard, Holland, Jewett, Kinney, Latimer (of R. R.) Love, Lusk, Mayfield, McNeil, Bagby, Miller, Moore, Navarro, Power, Runnels, Scott, Smyth, Tarrant, Van Zandt, Wright and Young—40.

Motion lost.

The ayes and noes were called for on the adoption of the section as amended, and were as follows:

Ayes—Messrs. President, Armstrong (of J) Armstrong (of R.) Baylor, Brashear, Brown. Caldwell, Clark, Cunningham, Cuney, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Holland. Jewett, Kinney, Latimer (of R. R) Love, Lusk, Mayfield, Bagby, Miller, Moore, Navarro, Power, Runnels, Smyth, Tarrant, Van Vandt, Wright and Young—34.

Noes—Messrs. Anderson, Bache, Burroughs, Darnell, Davis, Hicks, Hogg, Horton, Howard. Hunter, Jones (of L) Lewis, Lumpkin, Lipscomb, McGowan, McNeil, Parker, Raines, Scott, White and Wood—23.

The section as amended was adopted.

In section 14th, the following amendment of the committee: "strike out from the word "State," in the first line, to the word "continue," in the second line, and insert the words "who shall be appointed by the Governor, by and with the advice and consent of the Senate"—was adopted by ayes and noes as follows:

Ayes—Messrs. President, Anderson, Armstrong (of J) Armstrong (of R) Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Kinney, Latimer (of L) Latimer (of R. R.) Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Bagby, Miller, Moore, Navarro, Parker, Power, Raines, Runnels, Scott, Smyth, Tarrant, Van Zandt, Wright and Young—50.

Noes—Messrs. Clark, Davis, Evans, Holland, Lewis and Wood—6.

Mr. Davis offered the following substitute for the amendment first adopted:

"There shall be elected by joint ballot of both Houses of the Legislature one Secretary of State, one Attorney General, one Treasurer and one Auditor, who shall hold their offices for the term of two years, and should a vacancy occur in either of the offices, it shall be filled by the Governor, until the next session of the Legislature, and until a successor is elected and qualified.',

Which substitute was rejected.

Mr. Mayfield offered the following amendment to the 14th section: insert after "Legislature" in the 6th line "or either House thereof;" which was adopted.

The following amendment of the committee to the 14th section was adopted: In 2d and 3d line, strike out "who shall continue in office during the term of four years', and insert "shall continue in office during the term of service of the Governor elect;" and the section as amended was adopted.

The proposition of the committee to strike out the 15th section was adopted by the Convention.

In section 16th. the following amendment of the committee was taken: "strike out in 7th line "a majority of the whole number elected to that House," and insert "two-thirds of the members present."

In the 10th line, strike out "a majority of the whole number elected to" and insert "two-thirds of the members present of." which amendment was adopted.

Mr. Darnell moved to strike out the words "members present," and insert "members elect;" upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong (of R) Bache, Burroughs, Caldwell, Clark, Cunningham, Cuney, Forbes. Hemphill, Hogg, Howard, Jewett, Latimer (of R. R.) Latimer (of L) Lumpkin, Lusk, Mayfield, McNeil, Bagby, Miller, Moore, Navarro, Parker, Power, Raines, Runnels, Scott, Smyth, Van Zandt, White, Wood and Young —34.

Noes—Messrs. Anderson, Armstrong (of J) Baylor, Brashear, Brown, Darnell, Davis, Evans, Everts, Gage, Henderson, Hicks, Horton, Holland, Hunter, Irion, Lewis, Love, Lipscomb, McGowan, Tarrant and Wright—22.

So the motion was adopted.

The following amendment of the committee, to the 16th section, was adopted:

Strike out 18th and 19th lines, and insert "and bills presented to the Governor, one day previous to its adjournment, not returned to the House in which they originated, before the adjournment of the Legislature, shall become a law, and have the same force and effect as if signed by the Governor"

The amendment of the committee, to strike out the 18th, 19th and 20th sections, was adopted by the Convention.

The amendment of the committee, to strike out, in the 1st line, 21st section, the word "always," was adopted.

The amendment of the committee to the 23d section, was adopted, and is as follows:

Amend by striking out all after the word "be," in the 2d line, and insert the words "biennially elected by the joint ballot of both Houses of the Legislature; and, in case of vacancy in either of said offices during the recess of the Legislature, such vacancy shall be filled by the Governor: which appointment shall continue until the close of the next session of the Legislature thereafter."

The amendment of the committee to strike out the 24th section, was adopted by the Convention.

The amendment of the committee to strike out the 4th, 5th and 6th sections of that part of the report relating to the militia, was adopted.

On motion of Mr. Mayfield, the Secretary was ordered to make out a fair copy of the report of the committee on the Executive Department, as amended.

On motion of Mr. Latimer (of R R) the report of the committee on the Legislative Department was taken up: and on motion of Mr. Mayfield, the Convention went into committee of the whole on said report, Mr. Mayfield in the chair.

In the 1st section, Mr. Jones moved to strike out "white;" lost.

Mr. *Young* moved to strike out "not taxed."

Mr. *Runnels* said that there might be many Indians taxed who were intelligent men and good citizens. In Mississippi the Legislature had passed a law allowing said persons to vote.

Mr. President *Rusk* said he should vote against striking out, not that he thought it material, but it is the term used in the Constitution of the United States. There will be very few Indians taxed, and very few except the civilized, allowed, these privileges. The committee would recollect the difficulty and great political excitement which had grown out of the subject of conflicting jurisdiction.

The motion was withdrawn.

Mr. *Moore* moved to strike out "now" before "Republic;" lost.

Mr. *Van Zandt* moved a re-consideration of the vote on striking out the word "white."

Mr. President *Rusk* said that he hoped the word *white* would be stricken out. If, as decided by the courts of the United States, all others except Africans and the descendants of Africans are white, where is the necessity of retaining it? It will be the same thing, whether it be stricken out, or remain. But if it remains, it may give rise to misunderstanding and difficulty. Every gentleman will put his own construction upon the term *white.* It may be contended that we intend to exclude the race which we found in possession of the country when we came here. This would be injurious to those people, to ourselves, and to the magnanimous character which the Americans have ever possessed.

Mr. *Runnels* said that the term *white* was intended by the committee to include Mexicans. The construction of the law was understood to be that all persons not Africans or the descendants of Africans, are deemed and considered white persons. Then he saw no necessity for striking it out. It would be placing our Constitution in an attitude before the world assumed by no other on the face of the earth. Inasmuch as the term *white* is not designed, and by no inference or construction under heaven could exclude Mexicans, he thought the amendment totally unnecessary and uncalled for.

Mr. *Kinney* said that from the argument of the gentleman from Brazoria, he was more strongly inclined to believe that it was absolutely necessary that the word "white" should be stricken out. All must be well aware that in closely contested elections every means is made use of to carry the election on the one side or the other. He had himself, on such occasions, seen persons known to have been citizens for the last six years, and four of that time employed in the service of the country without ever receiving one dollar of compensation, refused the privilege of voting. He had known such men to take the oath of allegiance three several times, and the only objection made was, that they could not be considered white persons; they were Mexicans. He would appeal to any honorable gentleman in this House, if it would not be easy sometimes to convince the judges of elections that certain men are not white, if a sufficient motive is presented? He had seen men who were not so very white in their principles in elections, and he had seen some who were perfectly white in principle, as he thought, who were not so very slight in their color. He was confident that the Convention had not intended to affect any rights of those entitled to them; of those who had been born and brought up in the country, who had suffered in its service, and contributed as much as any towards paying the expenses of the country. But if the word were left in, from what had passed, he was satisfied such a question might arise at every election for ten years to come. He therefore hoped the word would be stricken out

Mr. *Jones* said that when he first made the motion he had not been led to it from the belief that it would make any difference in a legal point of view. He was satisfied that every Mexican and descendant of Indians would have the same rights with or without that word in the section. But he had seen a great deal of difficulty and embarrassment in various places in the Republic under a similar provision. He had seen objection made to Mexicans, descendants of Indians, and even to persons of a somewhat dark complexion, caused by the heat of a southern sun. It was with a view to prevent confusion that he wished the word stricken out.

The vote was then reconsidered.

Question on striking out "white."

Mr. *Hogg* said that he disliked to be troublesome to the House, as well upon this matter as upon any other. But he could not give his assent to striking out the word "white." As it is incorporated in all the Constitutions of the United States which he had ever noticed, he could not see any propriety in this Convention leaving it out, particularly as it had been contended by every gentleman who had spoken upon the subject that it was immaterial. He thought it was of some importance to retain the word: he was satisfied it would have a tendency to bar those regularly barred by the following provisions. Suppose a man deeply tainted with African blood should come up. how would you exclude him if the word "white" is stricken out? If retained, he will have to go back and prove his pedigree. He thought that striking out would hereafter produce considerable difficulty in barring those intended to be barred. He was as much opposed as any gentleman to excluding from the right of suffrage the aborigines of this country, who had participated in the revolution, notwithstanding they may have abused that privilege. But he was opposed to striking out this word. He thought it would look strange in the Constitution of Texas not to have it inserted.

Mr. *Navarro* said, that if the word *white* means anything at all it means a great deal, and if it does not mean anything at all it is entirely superfluous, as well as odious, and, if you please, ridiculous. He made no remarks with the idea that this question had any relation to the Mexican people, for they are unquestionably entitled to vote. By the application of the word *white*, certain persons may be qualified, &c.,—and others, though as white as snow, yet not white by descent, be disqualified. That is to say, white negroes or the descendants of Africans, who, in the course of time become so nearly white that no distinction or scarcely any can be made. He was as much opposed to giving the right of suffrage to Africans or the descendants of Africans as any other gentleman. He hoped the Convention would be clearly convinced of the propriety and expediency of striking out this word. It is odious, captious and redundant: and may be the means at elections of disqualifying persons who are legal voters, but who perhaps by arbitrary judges may not be considered as white.

Mr. *Jewett* was in favor of striking out, otherwise you might exclude a large class of citizens clearly entitled under the existing Constitution of Texas. He did not wish to enlarge or diminish the present basis. If the word "white" be retained, by the construction of the judges of elections in different counties, the rights of this class of citizens may be abridged. A large class of Mexicans might not be considered white by some of the judges, though all lawyers will agree that they are so.

The word was stricken out.

Mr. Anderson offered an amendment, inserting the age of twenty-one years. Adopted.

Mr. *Anderson* moved to insert "provided that no soldier, seaman or marine belonging to the army or navy of the United States, shall be entitled to vote in any election to be held under this Constitution."

He thought no argument was necessary to convince the mind of the necessity of this provision. It was sustained by precedents, being contained in nearly every State Constitution in the United States. Without something of the kind, those who should be introduced here for purposes of defence, would be permitted to mingle in elections, without knowing the wants and necessities of the particular county where they might vote, and might frequently elect an individual to represent us in some office of the State, contrary to the express wish of the county.

Amendment adopted.

Mr. Cunningham moved to strike out "adoption of this Constitution," and insert "acceptance of this Constitution by the Congress of the United States."

Mr. President *Rusk* said that he should object to the proposed amendment, on the ground that it would seem to say that we did not consider annexation as completed. In his view we are now a State of the United States; all the conditions on our part have been complied with; and we are a State without a Constitution. There is no State in the United States in the same situation. We are now *de facto et de jure* a State. This amendment would seem to contradict that idea.

He looked upon the matter of annexation as entirely complete: the United States cannot in justice refuse us: the moral sentiment of the civilized world would not justify them in saying that we are not annexed. the only condition to be performed, is to present a republican Constitution. The honor and faith of that government and people are pledged to us; and our government and people having accepted the conditions, the contract cannot now be inquired into.

Mr. *Brown* said that by referring to the 31st and 32d sections, it would be seen that the committee found no subject for alarm in the words "after the adoption of this Constitution by the Congress of the U. States." In two instances the committee on the Legislative department had thought proper to provide that certain things should be done after the adoption of this Constitution by the Congress of the United States: and he saw no danger in extending it to other cases. He believed that by our assent to the joint resolutions, there was a moral obligation imposed upon the U. States, which never could be justly avoided, to receive a proper Constitution from Texas, and admit her as a State. He believed the tie now existing between the two countries was one which could not be sundered by any rule of morality; that there was no moral precedent which would justify or authorize the U. States to withdraw from those propositions so solemnly tendered to us. But he spoke of the legal effect of things. If we belong to the U. States, the laws of the U. States are in operation over us. He thought it would be proper to prescribe at what time they should go into effect, for until the final action of Congress we do not belong to the U. States. He never heard of sovereignty being parted with by implication. It was a very rare act, and to be performed with the utmost caution and ceremony. Assuming the fact that we form a part of the U. States, yet he saw no danger in attaching some positive signification to the word "adoption" here. It might as fairly be presumed to mean adoption by the people of Texas, and more so, than by the U. States.

Mr. *Davis* proposed to substitute "the acceptance of the terms by the Convention."

Mr. *Van Zandt* should move to insert "its adoption by the people."

Mr. *Cunningham* said his object was to prevent the construction which might be put upon this clause. It might be considered according to its reading at present to mean adoption by the people. We are certainly not annexed until all the conditions are complied with. Persons who may become citizens of the Republic of Texas, after the time of the adoption of the Constitution by the people, and before the conditions are fully complied with, are not provided for in this Constitution.

Mr. *Hemphill* said that if the Convention should refuse to adopt the amendment offered by the gentleman from Victoria, a large class of citizens would be disfranchised. All persons who have emigrated to Texas within the last three or four months will be unable to become citizens of the Republic. If they were to reside here even six months, without taking the oath of allegiance, they do not become citizens. And if the opinion of some gentleman is correct, that we are a part of the U. States, they could not afterwards become citizens. Many of them would be obliged to remain in the United States the term of five years before they could become citizens. The argument of gentlemen that we are now annexed, and have become a portion of the U. States, is true in some respects; but he could not see how it is true in others. Though we might all of us believe here that we are fully entitled to all the privileges of a part of the U. States, yet unless the U. States should be of the same opinion, ours would be of no avail whatever. We have received no such information with regard to their views; and the last letter of Mr. Donelson says distinctly, that Texas will be considered an independent Republic until the final declaratory law is passed accepting our Constitution.

On motion of Mr. Van Zandt, the Committee rose, reported progress and asked leave to sit again. Which report was adopted; and

The Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment; and went into committee of the whole—Mr. Lewis in the chair.

Mr. Davis withdrew his substitute.

Mr. Cunningham's amendment was rejected.

Mr. Young moved to strike out "General Assembly" wherever it occurred in the report, and insert "Legislature." Carried.

In the 5th section, Mr. Love moved to strike out "two years," and insert "one year." Rejected.

In 6th section, Mr. Love moved to strike out "ballot," and insert "*viva voce*." Rejected by a vote of 19 to 26.

In the 7th section. Mr. Burroughs moved to strike out "twenty-five," and insert "twenty one."

Mr. Davis moved to strike out "at the time of the adoption of this Constitution." and insert "at the time of the first election for members of the Legislature." Rejected.

In the 9th section, Mr. President Rusk moved to strike out "one-third," and insert one-half." Rejected.

Mr. Darnell moved to strike out "qualified electors," and insert "free white population." Rejected.

In the 10th section, Mr. Forbes moved to strike out "in consequence of the first election," and insert 'at the first meeting of the Legislature." Adopted.

In the 13th section, Mr. Latimer of Red River, moved to strike out all after the word "years," being the clause relating to the payment of taxes, Rejected.

Mr. Burroughs moved to strike out "thirty," and insert "twenty-five." Rejected.

Mr. Anderson moved to strike out "and," between "State and "county," and insert "or." Adopted.

In the 14th section, Mr. Moore proposed to strike out the words "President, and" and the word "other." It will then read "the Senate shall choose its officers."

Mr. *Mayfield* thought the suggestion a very good one; and proposed to insert "President *pro tem.*" Adopted.

Mr. Jones moved to insert "of two-thirds" after "a majority." Adopted."

In the 16th section, Mr. *Love* moved to strike out "excepting such parts as in its judgment may require secrecy." His object was, that whatever the Senate should do, should be made public. He was opposed to secret sessions and action on the part of the representatives of the people; and that he called the republican doctrine, though some of his democratic friends might think otherwise. He wished them compelled to publish all their proceedings, that the people might know what they have been at.

Amendment adopted.

In the 20th section, Mr. Love moved to strike out all after "open." Adopted.

In the 26th section, the words in brackets, the office of postmaster excepted," were stricken out.

Mr. *Bagby* moved to strike out the 28th section entirely. He thought for his part, that no man nor set of men should be disfranchised: and did not wish any section of this kind to appear in the Constitution of our State.

M. *Moore* said he did not rise for the purpose of making a speech, but merely to observe that in the Bill of Rights which has been adopted, it declares that no man or set of men shall be disfranchised, but that every citizen shall exercise all the great political attributes of a freeman. Under these circumstances can you now turn round and say to Ministers of the Gospel, you shall not exercise those rights? Why exclude them any more than lawyers, physicians, or any other set of men? It appeared to him that by adopting this provision, the Constitution would be made inconsistent with itself.

Mr. *Baylor* said: it seems to me, Mr. Chairman, that the argument of the gentleman from Harris cannot be sustained. In the Constitution lately adopted by the State of Louisiana, the same great elementary truths, so far as political liberties are concerned, are to be found. And yet, sir, we find that the wisdom and experience in that State Convention assembled, have adopted precisely such a clause as the one under consideration. I think the clause a wholesome and wise one. I do not think that any office coming directly from the people ought ever to be filled by the clergy of any denomination. I would as soon see a woman mingling with the populace at large, mounting the rostrum, and making stump speeches as it is generally called, as to see a clergyman engaged in business of this kind.. Sir, the good and pious do not wish this thing; none but the ambitious, and they before all others ought to be excluded. There are sectarian jealousies and heart burnings enough among the various religious denominations of every country; and by opening this new field to human ambition, you will only make the breach between the different sects of Christians wider than it is now. I think, therefore, that the section ought to be retained. A great deal might be said upon the subject. It seems to me further, that it is calculated to keep clear and well defined the distinction between Church and State, so essentially necessary to human liberty and happiness. Sir, priests and kings, the former of every denomination, not the Catholic alone, have conspired in all countries and nations to enslave mankind. It has been a received maxim in Europe, that the king should govern the priest, and the priest the people. What have our fathers thought upon the subject? In many of the State Constitutions this clause has been inserted. It has been thought wise and proper by their framers. A similar feature is found in our present Constitution. In conclusion,—I have neither the strength nor the ability to do justice to the subject: I therefore simply say that I hope the clause will be retained by the good sense of the House.

Mr. *Moore* said: every thing which I have heard fall from the lips of the gentleman from Fayette, has added to the veneration and esteem with which I regarded him. Indeed if it were possible to turn me from the position which I consider as the one indicated by truth and reason to be manifested, I might be swayed by his arguments and example.—But the more I have reflected upon this question, the more I have investigated the subject, the greater the reverence with which I have listened to the remarks of that excellent man, I still only find new arguments to strengthen me in the opinion which I had first formed. He has alluded to the maxim that kings control the priests, and the priests the people. But this doctrine only prevailed in the dark ages of former times, when the people were grovelling in ignorance, and freedom was wholly unknown to the great mass. But, sir, would it become the enlightened legislators of the present day to act in accordance with this maxim of the dark ages, and in admitting it, to admit also the calumny involved in it? For that honorable man does not surely wish to say to the people of this age and country, that they, like those of former days can be swayed by the priesthood, that they are base and grovelling in ignorance, and that by this Constitution they should become serfs and slaves. No, sir. I believe better things of them: I believe that they are moral, intelligent, and upright, and fully capable of deciding for themselves who are fit to represent them in the halls of legislation, or upon the judicial bench, or in the Executive department of the country. Yes, sir: I believe fully in the principle that the intelligent and virtuous citizens of any country to be truly free, should exercise the great rights of suffrage freely; and do [illegible] you say to them that these men, the most virtuous and talented, the most distinguished for integrity and purity of character, shall not, if the people wish it, approach your legislative halls? What, sir! is it [illegible] person, that the freemen of this country should fear to hear the words of truth from their lips? What, sir, have we just listened to? Whose words are more respected here than these of the gentleman we have just heard? Whose sentiments are more worthy of respect? And did his fellow citizens do wrong in electing him, a Minister of the Gospel to this high station? By no means: we have profited greatly by his wisdom, by his experience: we are, I may say, controlled by his virtues. And if the day should ever come when a great and good man who may have been a Minister of the Gospel, but had so far gained the respect, esteem and confidence of his fellow-citizens, that they, not fearing that any of their great rights will be jeopardized, that his breath, like the poisoning Upas, will cast around him nothing but evil, shall elevate such a man to a high station. if that time should ever come, I shall be proud of it. the freemen of this country and throughout the world would be proud of it.

I have said, that if this provision is retained in the Constitution, it will be inconsistent with itself. So it is. We say here in the Bill of Rights, that all freemen have equal rights. What meaning do you attach to that: what follows from that? That every freeman shall be eligible to office. And now you would turn round and say to Ministers of the Gospel, those holy and pure men, you shall be shut out from the legislative halls of your country, because we fear that you will do evil. It is a reproach cast upon the people of the country. I will ever trust to the intelligence, the honesty and uprightness of the people to protect their freedom from the poisoning touch of the priest. or the combined influence of all the demagogues, the tyrants and the enemies of freedom throughout the world.

Mr. *Brown* said: he was rather astonished at the reasoning of the gentleman from Harris. He would ask if it was any more of an infraction of the Bill of Rights to say that priests should not participate in legislation, then to say that persons under twenty-five years of age shall not serve in one House, or persons under thirty in the other, and that minors and women should have no control over the government? The Bill of Rights consists of general declarations; it stands as the fundamental law, except so far as it is qualified or modified by the Constitution. He should offer an amendment: he was in favor of striking out one part of the section. He was in favor of excluding ministers of the Gospel from any participation in the affairs of government. He saw, however, no necessity of expressing a reason in the section: and if there should be any, he would have it a just one. If he should vote for the section, it was not for the sake of preserving the church pure and uncontaminated, but for the sake of political security. He would move to strike out that part of the section relating to their "dedication to God, and the care of souls."

Mr. *Henderson* said: I am in favor, Mr. Chairman, of the motion made by the gentleman from Red River. I shall support it, not alone because I wish to protect the intelligent ministry of this country in their rights, but because I consider in doing so I am protecting the great mass of the freemen of the country in their rights. If the subject of inquiry were this alone, whether by my vote here I would exclude one of these individuals who are called upon to do any service that may be required of others, from participating in legislation, or would extend to them the same privileges which we assume to ourselves, I would say that I was bound by conscience not to exclude them. But it is not a single question. The question is, will you trust the people of Texas to choose their Representatives, and gentlemen may disguise it as they please, to this we are brought at last. If we adopt the section proposed, we shall be saying to the people of Texas, you are unfit to govern yourselves; you shall not be permitted to choose your representatives from a class proscribed by us. I am not contending alone for the privileges of this portion of the community, but I stand up here as the advocate of the rights of of the great mass of the people.

We might as well exclude the lawyer, the physician, or the men of any other profession. We might as well say to the people, you shall not exercise the privilege of choosing from these classes. I have no predilections in favor of any particular religious sect; I am not actuated on this occasion by a disposition to give any denomination in particular any influence in this House. But when I look back at the former situation of our country, and look at the present state of things in Texas, I am compelled to admit that this class of men have done more than all others in the great work of reforming the community, in promoting the good order of society, and giving force to the laws by quieting the turbulent spirit of our people. If we seek in the history of the last few years, the causes which have produced the changes which we see spreading all over the face of society, we shall find them more attributable to the ministry of the country than to the laws; we shall find the cause chiefly in the manner in which those laws have been adhered to and enforced. And I would ask any gentleman if he can point me to one single instance where the ministers of God have attempted to infringe the rights of the people? I would call upon him to say whether in this or any other part of this free land of America, this portion of the people have ever exercised their authority by way of attempting to control the political establishments of the country? Have they asserted the rights which in all human probability they might have done by hanging together? And even suppose that they had formed combinations of that sort, I would ask if there is any danger to be apprehended from that source? Have they at any time opposed the exercise of civil and religious liberty? Have they ever set up a claim to exclusive privileges? But what must be the mortification of some of these gentlemen, who have stood up here on the bloody field of battle, asserting and maintaining the liberties of their country? Will any one upon this floor say that they are unworthy the trust which the people might repose in them?

By adopting this section, we are saying to the people that they are incapable of self-government, and to the world that the people of Texas would select those persons from the ministry who would overturn their liberties.

But we are told by gentlemen that there is no better reason for striking out this than for striking out the provisions relating to age—as a qualification. I would ask if there is any parallel in these cases? We say that every citizen, when he shall arrive at the age of twenty-one shall be entitled to vote; at twenty-five, to serve as a member of the House; and at thirty, if he shall be chosen by the people, to act as Governor. Is there any similarity whatever? In the one case it is necessary to fix some age at which persons shall be qualified to vote, or eligible to office. All that I wish is this: that the people shall be permitted to choose the men whoever they may consider best qualified to represent them at the seat of legislation. All I wish is to be consistent, and say to the whole class of religionists and the sinners of Texas, that they are, so far as regards their political privileges, on an equality. Do we fear any invasions upon our liberties, divided as they are, into numerous sects? Where has there been any evidence of danger, where even any attempt of this kind? I have seen nothing of it; I have seen no attempt to subvert or abridge the liberties of the people of Texas, or to obtain exclusive privileges by any sect which has prevailed in this land; nor do I expect it. But what will be the consequence of adopting this clause? Will it not be just to excite the opposition of a large and respectable class of the people of Texas against the Constitution we are about to make? I say it is against the spirit of republicanism, I will not say democracy, that such a clause as this should be incorporated into the Constitution, for disfranchising men who are declared by the Declaration of Independence in the United States to have equal rights with all of us. It is against the provisions and spirit of the Bill of Rights, and an attempt to take away principles not only from this class of citizens, but from the people. In voting as I shall vote upon this question, I consider that I shall be taking nothing from God that is his, nothing from Cæsar that is Cæsar's; and that I shall only be giving to the people of Texas the things that belong to the people of Texas.

Mr. *Davis* said: The only reason why I rise, Mr. Chairman, is that during my canvass in Liberty county I was accused of wishing to unite Church and State, in consequence of my opinions upon this subject among others. I deny that it is uniting Church and State to permit ministers of the gospel to participate in the legislation of the country. If we exclude preachers on this ground in consequence of their possessing certain religious tenets, should we not for the same reason exclude all other individuals who sustain the same tenets? What is the difference? If an effort is desired to be made by the religious portion of the community to unite Church and State, may it not as well be made by the members of the churches as ministers of the gospel? If we are to exclude ministers of the gospel for the purpose of preventing that dreaded union, let us go the whole length, and prevent every individual who has any religious creed from being eligible to a seat in the Legislature of the country. Are there not, in the various religious denominations, men of as much intelligence and probably more than is to be found in the pastors of their churches? Again, as has been remarked, this section is in violation of the Bill of Rights. We have there declared that all have equal rights; and I do contend that no individual should be prohibited from filling any of the offices of the State, unless he has been guilty of a gross violation of the laws of the country. But, sir, I would ask if it is a crime to be a minister of the gospel, to teach those doctrines which moralize the community more than any thing else? It is not, sir. Gentlemen tell you that it is equally a violation of the Bill of Rights to require an individual to be twenty-five years of age before he shall be permitted to sit in the Legislature, and so on. Now, sir, I would ask you, when every individual in the community arrives at that age, if he has not equal rights and privileges? This is not giving one man exclusive rights and privileges: when every individual arrives at the age designated, he is entitled to the same. But they are endeavoring to prevent ministers of the gospel from ever being elected to this office. The distinction, sir, is a marked one.

On motion of Mr. Van Zandt, the committee rose and reported progress; and the report being adopted, the committee adjourned until tomorrow morning at half past eight o'clock.

Tuesday, July 22d, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.
Prayer by the Chaplain.

Mr. Gage offered the following resolution:

Resolved, That the committee on Printing be instructed to contract for ——— copies of the New Era, weekly, containing the journals of the Convention, for the use of its members,

On motion of Mr. Davis, the rule requiring the resolution to lay on the table one day for consideration was suspended.

On motion of Mr. Gage, the blank in the resolution was filled with 1,500, and the resolution, as amended, was adopted.

The President of the Convention appointed Messrs. Mayfield and Caldwell to wait on ex President Lamar, and invite him to a seat within the bar.

The report of the committee on the Legislative Department was taken up.

On motion of Mr. Baylor, the Convention resolved itself into committee of the whole on said report—Mr. Baylor in the Chair.

The amendment offered by Mr Brown to the 28th section, was under consideration.

Mr. *Love* addressed the Convention as follows: I think, Mr. Chairman, that I should have been better able to speak, had I attempted it on yesterday, as I intended. But I feel it my duty, not only to my constituents, but to the community at large, that I should express my opinions upon the subject. I am opposed to striking out that clause, or in other words, to the legislation of priests. I yield to none in my respect for the religious denominations of the country as a class, and those who minister at the altar of the most High God. And it is because I entertain this respect for them that I would exclude them from a participation in these things; which can result in no good; and must inevitably result in injury, whenever and wherever it is undertaken. And though the spirit of the age has broken up old established principles to some extent, and though it is gravely asserted here in substance that the Constitution of the United States is antiquated, that the public mind at the time of its adoption was not sufficiently enlightened and sensible to advocate the principles of liberty in their proper enlargement; yet, sir, I did not expect, whatever objections might be found to that instrument which has successfully conducted the United States from a small beginning to the position of a great and mighty empire, that there could now be attempted an invasion upon what I consider the established duties of the ministers of every religious denomination; that it would be openly asserted, that they are to be introduced into the Legislature of the country. It is urged that there is danger in what is called an attempt to curtail the privileges of any religious denomination, or in other words, that you will carry against you the influence of these sects with the priesthood at their head. So far as I am concerned, this has no terrors for me. My line of duty is plainly marked out, whatever may be the consequences It is the solemn duty of a member of the Legislature, and more especially of this Convention, to express freely his opinions, be they palatable or not to one denomination or another. If we take a view of the history of religious denominations, we shall find that the corruption of the church has had its origin in the disposition to meddle in matters in which it had no concern. The ministry of Christ are solemnly dedicated to God, and set apart to his holy service by the imposition of hands: the line of their duties is clearly marked out in the admonitions of our Savior to the Apostles, when they were first sent out, without scrip or money, to teach the nations of the world the service of the living God. But we are told that it is an infraction of the rights and liberties of this class to exclude them from the halls of legislation. I think differently. When once they have taken upon themselves the discharge of their holy and solemn functions, so long as they are disposed to continue in that high calling, I would have them confine themselves to the object for which they were set apart; and if they profess the service of the world, let them put off their sacred office, and I have no objection, then, to their coming to the Legislature and expressing their opinions like any other individual in the community. I remember, in conversation with the Catholic Bishop in our city, who is a wise and good man, and whom I have frequently interrogated upon matters relating to his church and the churces generally, he has expressed the opinion that any interference on the part of the church with the civil authority, must always produce corruption in religion. He instanced the church in Mexico as an example. He stated that there was not a Catholic, within the U. States, or, to his knowledge, in Christendom, who did not desire that universal religious toleration should prevail. He said further, that the power of government should never be brought to bear upon religion, nor should religion ever be permitted to exercise a control over the government; for when such a connection is allowed to subsist, the corruption of the church is its immediate result. He mentioned one thing which I had not known, that until the reformation was brought about in England, the priests had no salaries, except the sums collected from voluntary tithes; the government paid nothing to the ministers of the gospel, and they had public schools, supported charitable institutions, and all without connection with the government. And the very moment that the government interfered and took upon itself the appointment of the clergy, and the regulation of their salaries, the pride and pomp of station led them to overlook their divine precepts by which all persons professing the religion of Jesus should be governed. What was the occasion of the

Protestant agitation in Europe? It originated in the corruptions of the church governed by kings, deteriorated in a thousand instances by the conduct of the head of the church and the constant abuse of power.—The Protestants marked out a different line of policy. They said it was wrong to unite church and State, wrong that the law should settle the rule of faith, and regulate the religion of Jesus Christ. They would not admit that men should be subject to human authority in matters of opinion: they denied the right to control the conscience, and claimed the right to worship as they pleased; although they submitted to the authority of the law, necessary to prevent crime and preserve the good order of society. This was the cause of the success of Protestantism in Germany, and in every other country where it gained any foothold at all. We are told, however, that there is no religious political party in the United States; that no danger therefore can possibly arise from permitting ministers of the gospel to become legislators. Now I remember, that if there is not such a party in politics, at least there is a party who have proclaimed it as policy that such a party should be established. I remember the declaration made on this subject by Dr. Ely, of the Presbyterian Church, a few years ago, in the paper which he edited. From that proceeded the Sunday mail project. The members of every denomination organized to effect the abrogation of the laws authorizing the carrying the mail on Sunday. This was an attempt to control the government and the people from religious motives exclusively. That question was set at rest by the celebrated report of Col. Johnson. Now whatever may be my respect for the Sabbath, and my feeling with respect to the propriety of keeping it holy, still I have not the right to control the consciences of men who think differently, or the action of the government, though in opposition to the wishes of the majority of those who profess religion in the land. And there is now, sir, even in the city of New York, a great religious excitement, or as they say, a Bible party is forming, for the purpose of compelling the use of Bibles in the public schools, whether parents wish it or not. There is one class of Christians who think that the Scriptures, if placed in uninstructed hands, may lead to evil: that they require to be explained, and wish the great principle of morality also to be taught in the public schools. But whether the principle is right or not, it is an act of tyranny to compel any denomination to use any book whatever at school. There is an attempt now making to array power against the Catholics in the United States. It has proceeded to the burning of convents and churches by mobs. Now this attack upon any religious denomination whatever, is evidently injurious to liberty. For whenever you array religious parties in opposition to each other, especially in legislation, no power, no arm can stay the tumult; because they each contend that they proceed upon the dictates of revelation itself. I would call attention to the effect that would in all probability be produced in this country, if we should strike out this section: I do not say it will now arise because such is the constitution of society at present, that no predominant sect can control legislation. But I do not know what the future may bring with it. Some sect may become predominant, and a majority of its priests may be assembled in your halls of legislation, giving laws to the residue. Possibly this Constitution may endure fifty years, more or less. Is it not then the dictate of wisdom to provide, while you may, against an evil which may arise hereafter? You may have here in one corner the Cardinal with his red hat, in another the Bishop with his black gown and surplice; you may have the Quaker with his broad brim, the Mormon elder, the Methodist preaching free grace, the Presbyterian predestination, the Baptist immersion, and other sects contending for sprinkling: and one cannot make a solitary allusion that will not stir up sectarian excitement and passion, and create a war of religion in your halls of legislation, in place of grave deliberation upon appropriate subjects. In the midst of them I fancy that I see my friend from Harris; and I think God intended him for a preacher, and will yet call him to that holy work: I think I see him rising to speak after the Cardinal with the red hat, or the Bishop, or the Mormon prophet. He would say: with all due deference to my right reverend friend, for whom I entertain the highest respect, yet his doctrines are based upon the old Federal notions of '98. What would be the response? If his opponent were of a meek and humble spirit, he would say, it is the fate of religion to be persecuted, and the servants of the Lord shall have a railing accusation brought against them; I forgive my brother as a Christian, but he is mistaken, and may the Lord deal with him as his accusation deserves. But if he is made of a more inflammatory material, he will at once pounce down upon him as a heretic, and denounce him as one who knows nothing about the true faith in religion and legislation. At last, after every one has expressed his own opinion, after all have expatiated upon the doctrines of free grace, predestination, immersion or sprinkling, the Mormon will rise and say, I am the prophet of the Lord: ye are all heretics, and I utter against you the sentence of damnation; you are all wrong, whilst my revelation is directly from the Lord. You may say this is fancy; but I tell you it is not so: in all probability such a state of things will arise, unless prevented by your action here.

The Mormons, or any other denomination may settle in a country and control it, and thus you may in time have a majority of priests legislating here for the balance of us sinners. God help us, I say, when that shall be the case. There is one thing: if a man who dedicates himself to the service of God as a teacher and preacher, is disposed to depart from his profession to mingle in the strifes of this world, he is a hypocrite. His mind will be called from the service of God to wander over things carnal, things not belonging to the duties of his calling. It is a sin, sir. I would ask you, if our Savior were again on earth, to judge and pass sentence upon these men mixing in the turmoil and business of the world, would he call them Christians? Would he not say, depart from me ye cursed? As sure as I live he would utter this denunciation. They may deceive the world; but the all searching eye of God knoweth their hearts, and if they are true to their profession and calling, he will give them grace to continue in it. If they are false-teachers, and they alone wish to mingle in the strifes and passions of the world, they can do nothing but evil, and not a particle of good.—What do they want to come here for? To pray for us when we get excited in our minds and do things which we ought not? One might get up and say, brethren, let us pray: but the Shaker would get up and say, let us dance: and the Mormon, war-like as well as saint like, would have his particular proposition to advance.

Now, whenever you encroach upon the line of duty, or throw temptation in the way of frail humanity, (and one of the best parts of the Lord's prayer is that which says, lead us not into temptation.) whenever you hold out to these ambitious gentlemen the allurements of fame and office, the hope of political preferment, such is the propensity to err in human nature, that a great many of them will fall into the snare. Therefore, as one of those who respect religion, and believe that they have done a great deal of good, I would by no means place temptation in their way unnecessarily. We are now told also, and it is very true, that the preachers of Texas have done a greater amount of good than any other class. I grant it: and they have my heart felt gratitude. In no country has there been a set of preachers who have more zealously striven to do their duty, and they have done it. Why have they done it? Because they have not mixed politics with religion. If they had been permitted, and had done so, would we have had the same respect and confidence in them that we have now? I would ask if their influence upon the mind is not invariably lessened whenever we see these gentlemen out of their way, and doing or saying things not belonging to their profession.—They should be kept holy. I venture to say, that whenever they have departed from the line of duty prescribed for them, they have done injury to the cause which they have advocated, and the principles promulgated by the Savior of the world. If they desert the service of God in the ministry to take part in the affairs of the world, they thereby lessen the confidence of the people in them, and their respect for their holy calling. They induce the feeling that they are men of like passions with us, or why would ambition find its way into their hearts? The only ambition which they should have, is that which the majority here do have, that of bringing the wicked to the feet of the Lord. They would rather bring one repentant sinner to the feet of the Lord, than to utter a speech here which would have the acclaim of admiring thousands, if good men: and if not, they have no business to come here to aid in forming the opinions of the community, while they are professing one thing and practising another.

There was another remark which I will notice, that if you exclude ministers from legislation, you will create a party against annexation. Why, sir: if we admit the truth of this declaration, it affords the strongest possible reason why they should be so excluded. If they as a party would attempt to exercise any such control over the people as to stir up opposition to this most desirable measure, simply from a selfish feeling like this, it is a very strong argument to show that they ought to be thus shut out. If they could so far forget the principles which they advocate, and the admonitions and warnings which they give from day to day to their brethren in the church and those who listen to them, as to interfere with a matter necessary to the public good, merely because they alone are excluded fram the halls of legislation: if they should display so much selfishness, meanness and wickedness, as to do this, then they ought by all means never to come there. I have never, sir, known a minister of the gospel who desired a change upon this subject, and I have never heard one single individual of that class express a wish that the law should be changed, so that they might become eligible.—If they do their duty, they have enough to do: they have no time to attend to legislation, which can be attended to very well without them. Now there are good and bad in all classes. There was a right Reverend Mr. Clark at Galveston, who belonged to a denomination, which has done more good than any other in America, the Methodists: because following the precepts of their founder, they have travelled into every valley, and gone into every hut to make converts: and who, together with the old Baptists, always true to their country, and always teaching the doctrines best for the country, have done more, in my opinion, than all the others combined. This Mr. Clark was at my house; and I declare in the presence of God, that he was the only man that ever ate at my table, who I wish had never eaten there. He went to the North, after he had gone like a wolf over the country, and there reviled us before the Methodist Conference, abused us without stint or measure, and took an active part in the discussion of abolition, and the denunciation of slaveholders. Is it not necessary to guard against such men? This man could have gone into any country, and been elected to your halls of legislation, if he had chosen to do so: he was plausible and sensible in his manner: yet he was a vile slanderer, who did not hesitate to deceive and betray those who confided in him. I will mention another instance of the folly of ministers mixing in the affairs of the world. In San Augustine, one right reverend gentleman recently shot another on account of some immaterial difference of opinion about a worldly matter. They have no business to mix with the affairs of the world any more than is necessary; if they do, they invariably fall into wickedness and ruin. I am not to be debarred from expressing the opinion boldly, I care not what the consequences to me as an individual, that they are the most unfit of all persons on the face of God's globe for legislators. I will tell you why, sir. As among the rest of mankind, there are a great many fanatics among them; men who would go voluntarily to the stake, and die in the belief that they were acting under the immediate inspiration of Almighty God. Let a passion arise in the bosoms of these men acting under this fancied inspiration, and you cannot tell the consequences. Look at the religious cruelties practised by the Spaniards in South America and Mexico. You may search the history of religious sects, and it is everywhere the same, except in the United States of America. Give any sect the predominance, and these consequences will follow, and there is no telling to what extent. They will quote the Scriptures, and misapply God's word to answer their own purpose, to justify their wrath against the vile heretics. Whenever you adopt a principle which will give any of them the control in your legislative halls, your liberties indeed will be gone. Our only chance for security and preservation might consist in the fact, that they are split up into various denominations, so that these who belong to the devil, might perhaps escape their ire and their wrath. It is said that we proscribe them; I say we do not. We have just as much right to ask to go into the pulpit, as they to claim the right to sit in the Legislature. The argument of the gentleman from San Augustine does not apply. He says we might as well exclude lawyers or persons of any other profession. There is a radical distinction, sir. Lawyers and doctors are no better than they should be; while they are, or at least, profess to be better than the common class, profess to have given up all to the service of God, and subjected every feeling of ambition in order to confine themselves strictly to the line of their duty. Not so with lawyers and doctors. I believe that mammon is uppermost in their minds. Perhaps they are as patriotic as others, but I have never yet seen one of them refuse his fifty drops. We don't see these classes of the body politic mixing much in religious strifes. It would be just as improper that they should be permitted to interfere with religious matters, as that any religionist should be permitted to mingle in their affairs. There is no proscription in this: because, if these men love the world better than they love God, they have nothing to do but to come out where they belong: and if they do not, they are doing God a disservice, and man an injury. Now I would ask what good can possibly arise from changing the established rule of action in this country upon this subject? I believe it is admitted that in most of the States preachers of the gospel are prohibited from participating in the legislation of the country. They have submitted quietly to this regulation: I have never heard a word of complaint against it. It is a good rule, always to let well enough alone. They had better confine themselves to the work to which they have dedicated their lives, leaving matters of the world to the world.

Mr. *Brown* said that he should record his vote in support of the declaration he made on yesterday, unawed by any consequences which might result from doing so. I know, he continued, that it is a judicious course in political life to be attached to the most numerous party; or where the majority is sunk in indifference and apathy, to side with the smaller party, if alive to a particular interest. But I shall not be governed by motives of expediency. Be the consequences what they may, though I draw down upon my offending head the whole wrath of the Apocalypse, I must pursue the course which I have intimated. I am opposed to the prevailing spirit of the times, in accordance with which, if any political matter is under discussion, if any election is to be had, if we are to select any officer, however obscure the office or mechanical its duties, every thing is to be referred to the people; and all because the last advices from the fountain head of democracy require it. It seems, sir, that by way of compliment, by way of recompense to those who sent us here, we are to restore back to them the powers they have just conferred upon us. Without a government, they have sent us here to form one, and out of compliment to them and for the sake of democracy we are to leave them without a government yet. Sir, there is nothing more revolting to my sense of justice, nothing more incompatible with my political principles than this corrupt tenet, *vox Populi, vox Dei.* When the will of the people is fairly ascertained, when it is deliberately and solemnly determined, this maxim may be regarded as generally true; but, sir, it is the office of the demagogue, and not the duty of the statesman, to seize on every transient prejudice and do the people a mortal injury while he holds out the words of flattery to their ear. Sir, in religion and politics I am for conforming to fundamental principles. I will never depart from any safe and wholesome rule for the sake of currying favor with the few who may feel the injurious operation of that rule, or for the purpose of escaping any responsibility whatsoever. I believe that ministers of the gospel should be excluded from the Legislature; I believe it consistent with the Bill of Rights that they should be so excluded. The same Constitution which provides that ministers shall be excluded, provides also that Indians, Africans, minors and women shall be excluded. I know not how it would be possible to erect a government for the general advantage of the whole without depriving some few individuals of their natural privileges. Because all men have certain natural rights, it by no means follows that they are all entitled to equal political power. Political power is the offspring of society. The Constitution governing that society as its fundamental law is adopted by the majority for the general good; and if the general good has to be effected by a sacrifice of the few, that sacrifice must be made. Every man when he enters into society is shorn of some of his natural rights; and if that society requires that some should be invested with more privileges than others, they generally are so invested; it is made the duty of one to submit, and the duty of another to prescribe. The gentleman from San Augustine, for whose disinterestedness and sincerity in all matters, I entertain a high respect, says that this is dictating to the people; that it is saying to them that from a certain class they shall not select their representatives. Now, sir, is it any more so than to tell them that they shall not send a man under twenty one years of age to the lower House, or one under thirty to the Senate; or that they shall not be represented by an African or Indian? If there is one case of dictation in the Constitution, there are five or six others beside. It is very probable that the people never would elect a minor or a woman, an African or an Indian, and very probably they would never send a preacher; but in these four instances enumerated they are debarred from doing so; and if gentlemen will not sustain the Constitution in this point to guard the people in their selection, they had better take away all restriction, and leave it to their constituency to cull their representatives from the world at large. It is asked if lawyers and doctors might not be excluded with equal propriety? I say yes, if the public good requires that they should not participate in legislation, proscribe them; and I for one will submit to the proscription. But I fancy, sir, that if we framed a Constitution making doctors and lawyers ineligible to seats in our legislative halls, the people would very soon call another Convention, and perhaps in their extreme zeal to cure their error, would have a Constitution declaring that none but lawyers should be there. It is an offence and stigma upon some when seeking office to be called lawyers; but, sir, I wish the offence were a graver one against me. I wish I were a better lawyer than I am, that the accusation might fall more heavily against my character than it does. For, sir, from my experience here I am well satisfied, notwithstanding the large amount of talent and experience brought to this body from different avocations in life, that in some instances the great hope and desire of this nation would have been placed in imminent jeopardy, if lawyers had not composed a part of this body. In two several instances, which I can call to mind, I have seen my friend from Washington, and yourself, sir, stand out prominently as light houses in the midst of the stream, waving us back from the rocks upon which we were about to be wrecked. I have seen propositions on the point of passing before this body, seemingly judicious in themselves, which conflicted word for word with the Constitution of the United States. In two several instances I have seen that danger pointed out, and provided against. Sir, the law is a science which draws within its vortex all other arts and all other sciences. Not one sound and serious charge can be made against it. It is followed, however, by a great many who are not proficients, and I take a very large share of this accusation upon myself. Now it is declared in the Bill of Rights, and in our own Constitution, that no preference shall be given to any religious sect. And while you record that principle in this instrument, gentlemen would place in the power of the people the means of directly exercising a preference. I would ask if there were a surplus fund belonging to the State to be distributed, and parties on political questions were nearly equally balanced, whether the minister who should have a seat in the Legislature would not endeavor to secure for his denomination the lion's share of it; whether instead of proceeding in the duty assigned him by his station, instead of thinking, and working, and deliberating for the public welfare, he would not be providing for his society? And I would ask if any party could depend upon his fidelity when such a reward should be held out for his apostacy? No, sir, I would not trust them. I am willing that they shall go into the world and preach the doctrines of the Saviour; I am willing that the law shall accompany them in their march and defend them from interruption by any body. But, sir, religion and politics are things which must ever run in parallel lines, which being produced ever so far can never meet; for whenever they meet, there is contamination, and religion has in it much more of earth than heaven. If accused by a minister of any denomination for fixing upon him the stigma of disfranchisement; if called upon face to face to justify myself for the vote I shall give, I would defend myself by the very principle which he publishes every Sunday to the world. I would tell him he could not serve God and Mammon. I would point him back to the life of our Saviour. I would point to his humble origin, to his meek and lowly progress through life, to his pure doctrines and his holy life; who shrank from, and at all times avoided the contamination of the world; who traversed the world every where, beset by the most powerful allurements, and yet he declared that the foxes had holes, and the birds of the air nests, but the Son of man had not where to lay his head. Mr. Chairman, if in the exercise of this power, of this right to fill office, it should happen that some man, actually good, should come into possession of it, I call upon the reflection of this body to sustain the assertion, that the pursuits in life of the pious ministry are such, that the business of propagating the word of God is such, that if well and properly pursued, they lead the mind away from the affairs and business of life, and render it unfit for political responsibility. It is declared on the face of revelation itself, that the children of this world are wiser in their generation than the children of light; and if we make any application of this passage at all, it would seem to indicate that temporal men should govern in temporal matters. I am not willing upon any consideration to relinquish the principle that Church and State, by every mode that can enter into the imagination of this body, should be kept separate, that neither may become corrupt, that religion should have its powerful sway and beneficent influence over private life, and that political affairs should rest in the hands of political men. This, sir, is a discrimination which I feel bound to observe. It seems to me safer and better for the institution of religion and better for the institution of government, that the two bodies, both grasping at power, both capable of forming combinations, formidable to liberty on the one hand and to religion on the other, should be kept forever separate and distinct.

Sir, I shall vote for the exclusion of ministers from the Legislature, and I believe that the enlightened and truly religious will justify and vindicate me in the vote which I shall give.

Mr. President *Rusk* said: The section here as it stands, Mr. Chairman, would exclude ministers of the gospel from occupying seats in the legislative halls of the country. The gentleman from Galveston (Mr. Love) has given us an able and eloquent argument in favor of their exclusion; but I think it based upon erroneous premises. The Constitution of the United States does not exclude preachers; nor is it always the case that when they turn politicians, they become hypocrites. This is confirmed by a reference to facts. A very able Senator of Georgia, one whose firmness and ability have done great service, Walter Colquit, is a minister of the gospel, and has been such for the last ten or fifteen years. There are many such examples. And moreover, many preachers turn hypocrites who do not turn politicians. The gentleman instances an individual who came here, enjoyed our hospitalities, and then went away and slandered us. I do not think this any argument at all; and if so, I believe it would better apply to some legal gentlemen. The same might be said of the instance of the preacher who shot at another. Some of the arguments adduced in support of this section seem to me to be brought forward at a wrong time in the history of the world. There has been some declamation against the dangerous influence which the ministry might exercise. Now, sir, the time has been when the people were ignorant and easily misled by the improper use of their office and position on the part of preachers of the gospel. They were looked upon as something sacred, as above the frailties and errors of human nature; they were believed not to be actuated by the same views and passions which governed their fellow men. In those times there was very great danger to be apprehended from the exercise of their influence. That they are tyrants, I do not agree; I think like other men; if you give them power, they want more; and man is a dangerous animal to trust with power. Let us pursue the argument. We cannot change their nature; and the history of the past, and every confidence in the truth of what they preach, induce me to believe that you might as well attempt to call back the waves of the ocean as to strive to stay their progress. If there is danger of their becoming politicians and exercising an improper influence, I would ask where is the greater danger, to have them in or out of the Legislature, if they are disposed to mingle in politics? I am inclined to believe, that if this clause is stricken out, there will not be three preachers in the Legislature of Texas for the next ten years. But nevertheless if the argument is correct, if they have a disposition to enter into politics, and to exercise a control over their fellow men, that disposition will still remain. And is it not a powerful argument in their hands that they are singled out by the framers of the Constitution, for exclusion from the privileges given to every other class in the community? If they have this mighty influence, and become ambitious, will they not then annul this obnoxious article which excludes them from sitting in the Legislature? Can they not say that this Convention has put a gag in the mouths and a bar in the way of the people?

That they have been deprived as far as possible of their right to a free and unbiassed choice? They would assail you; and they would have just grounds for it. For you have said in the Bill of Rights, that no citizen shall be deprived of privileges, or in any manner disfranchised, except by due course of the law of the land. Are they not hereby deprived of some privileges? And will not this afford a fair pretext to assault your Constitution? Gentlemen are mistaken in regard to precedents upon this subject in the history of the States of the Union. The Constitution of the United States does not exclude ministers of the gospel; and I will venture the assertion that more than one half of the Constitutions of the different States of the Union do not exclude them; and what great danger has ever in consequence manifested itself in that country? I believe this doctrine was first advanced in the State of Tennessee, in a time of great excitement. In Georgia, they go to the Legislature, and no great harm has been the result. They have not attempted to exercise any improper influence there, or in any of the States where they enjoy this privilege. It is true that Mr. Ely made some such attempt; that he endeavored to stop the Sunday mails. And who was Mr. Ely? He was a man of powerful mind, at the head of a powerful denomination, with the command of gigantic means. They made a strong attempt; and what was the result? Defeat; most shameful defeat; a result to be expected from the intelligence of the people of the United States. And are we willing to say in our Constitution that we anticipate less intelligence in our posterity than is to be found in the U. States?

I shall vote against the amendment now proposed, because I intend to vote for striking out entirely, upon these principles; first, that I do not believe that the clergy will attempt any improper or dangerous exercise of power; secondly, I believe that the good sense of the people of Texas, if they make any such attempt, will at once defeat it with shame and disgrace to themselves; and I am not willing to withhold from any set of men privileges granted to another.

Again, so far as I can, in conformity with any idea of government at all, extend to the people the power of selecting those who are to govern and make laws for them; I wish to put no prohibition upon their free right to select for office whom they will. And upon still another ground, because I do not believe if this section is stricken out now, that the present age is in any danger, and I do not wish to take upon myself unnecessary trouble. If those who come after us shall find from experience that the absence of this article is deleterious to the cause of good government and the principles of liberty, I have sufficient confidence to believe that they will be intelligent and patriotic enough to insert any clause which may be necessary to guard the great principles of republican government.

Mr. Van Zandt said: I fear, Mr. Chairman, that the committee is already anxious to see the debate terminated, and the question taken upon the amendment; but as I shall be called to vote upon this subject, and as it is one in which I feel some interest, I shall beg the indulgence of the House to make a few remarks. This provision of the bill now under consideration, interferes, as I conceive, with no portion of the Bill of Rights The portion referred to is that which declares that no citizen "shall be deprived of privileges, or in any manner disfranchised, except by due course of the law of the land." Now I cannot conclude that this provision in any shape or form contradicts or conflicts with that article. What is meant by due course of the law? We assert in the first article, that all men are born free and equal, and are entitled to equal rights and privileges; and then we go on in the construction of the organic law, and prohibit individuals under thirty years of age from serving in the Senate, and those under twenty one from voting or being elected to a seat in the lower branch of the Legislature. And we proceed in the same way to exclude ministers of the gospel. I would ask gentlemen to show the distinction: I would ask them if it is not as much an infraction of the Bill of Rights in the one instance as in the other? But as it says, "except by due course of law," I conceive that by no manner of construction can this provision conflict with any portion of the Bill of rights. The question is then simply one of expediency: is it expedient to admit ministers of the gospel into the counsels of the country?—That is the question: and it involves none of the great principles of liberty, it embraces no question except that of expediency. We say that it is not expedient to have in the Senate men under thirty years of age: we require in that grave and deliberative body men in whom the fire of youth has passed away, men of mature judgment; and we take maturity of years as the best criterion by which to select them. And so with regard to others: fitness for office is taken into the account. When we exclude felons, it is on account of their unfitness: in other words, because it is inexpedient to permit them to hold office. We do not thereby say that all who are excluded are therefore to be ranked with felons. By the same course of reasoning it would follow that all persons under thirty, under twenty-one, and the ladies of the country are on a par with felons. For females and young men are equally excluded. I have ever believed, and attempted to act upon the principle, and it is true in religion and political government as in every thing else, that unity of design is the secret of success. Man, with his contracted powers, is seldom capable of grasping more than one science: or rather, he is more likely to succeed in any particular study or pursuit in life, if he makes it his sole occupation; and by scattering his efforts, they almost always prove fruitless. Look at the material universe which surrounds us: we have but one sun to give us light by day, but one moon, to enliven us by night: each particular star has its sphere and its own particular part to perform in the economy of nature. So it is with man. He has his particular orbit around which to revolve: he has his particular duties to discharge. And it is rare in this world to meet with a universal genius: it is an old adage, that a Jack at all trades is good in none.—Whenever you find a preacher dabbling in politics, in nine cases out of ten, you will find that he is neither fit for church nor state. Whenever they descend from the sacred desk, and mingle with the rabble in the street and around grog-shops, their usefulness is paralyzed, and they are but common men in the community. Take up any of the pursuits of life, any of the learned professions, and see who have succeeded. Take the science of medicine, for example: are they not those who have devoted the years of a long life to the pursuit of that particular branch of study? Never would history have written the lives of these men in such shining characters, if they had diversified their pursuits, if they had divided their attention among different objects. Take the profession of the law: where do you find such men as Ellenborough, Marshall, or Story, men who have devoted years to a solitary and isolated study? Where such Statesmen as Calhoun, Webster, Sir Robert Peel or Lord Brougham, men who have devoted a lifetime to study and acquisition? It is true there some few occasionally called to politics who have spent a portion of their lives in the study and practice of the law: but they are in keeping and convertible, the one with the other; for no man can become a great statesman until he shall have learned in the study of the law the rights upon which the state is founded. What is the case with divines? Where do you find such men as Wesley, Scott, or Bascom, the admiration of various countries throughout the world, men who, from the time of their conversion, devoted themselves with untiring ardor to their sacred duties? In all times, and under all circumstances, sir, it is a well settled maxim, that in the unity of design is to be found the secret of success. But let us examine another view taken by the gentleman from San Augustine: that we are more indebted to the preachers of Texas for our moral reformation than to any other class. I cheerfully accord the truth of it. No class has done more or so much to sow the seeds of peace and righteousness in this beautiful land. And why, sir, is this so? Is it because they have participated in legislation: because they have mingled with the rabble surrounding the groggeries, electioneering with voters? No, sir: it is because they have been devoted to the functions of their ministry: it is because you have had this wise provision in your Constitution, that ministers of the gospel being dedicated to God and the care of souls, should not be eligible to a seat in either branch of Congress. It is to this that we are to attribute their usefulness. I ask then, will you call them from that holy vocation, will you invite them to leave the path of peace and happiness, to engage in the turmoils and strifes of a political life? Preachers of the gospel, like all others, are only mortals, and frequently misled by mortal things. You will remember that important portion of the Lord's prayer, which has been alluded to: "lead us not into temptation." I ask if preachers of the gospel are less liable than others to temptation? Is it not the nature of man to be liable to error: and if you hold up these inducements to them, are they not likely to be misled? I, for one, say "lead them not into temptation" Their office is higher than any that we can confer, and I would not divert them from its duties. Again: is it not natural when the danger is over, and the storm gone by, and all is peace, that we should neglect to prepare for a second appearance of the tempest? When priestcraft became troublesome in former ages, when it established the inquisition, when the priesthood was controlled by kings, who through them governed the people, when the blood of martyrs cried continually for vengeance, then all felt the evil in all its consequences. Gentlemen tell us this time has gone by. True, it has gone by: the people have risen in their might, and thrown off the bondage under which they groaned for centuries. Then I say let us provide against the return of such a state of things. If we again open the door, we shall find ourselves involved in difficulties. It is best for the people to be careful of their safety, to protect themselves betimes against danger. You may believe you have killed off the Hydra, whose winding folds encircled and strangled the genius of liberty in her cradle: that you have cut off all its heads. But I tell you, when you strike out this section, you are but preparing the way for the birth and nurture of a young Hydra, which may strangle liberty in her full growth. The question is an important one; one that involves perhaps the safety and future welfare of the people of the country. I am for keeping the ministry within their proper sphere: there they will be profitable and useful, useful not only for time but for eternity.

Mr. *Evans:* We have int his section, Mr. Chairman, two distinct propositions: one of which, that ministers of the gospel, being dedicated to God and the care of souls, ought not to be diverted from the performance of their sacred functions, it is moved by the gentleman from Colorado to strike out. I shall advocate that proposition, not with the view only of getting clear of that part of the provision, but also with that of striking out the latter part which excludes them from the Legislature. With regard to the first proposition, "having the care of souls," &c., it is singular indeed that in this age, men will persist in a total ignorance of the character and duties of the Christian profession. There may have been in the days of witchcraft, and perhaps there may be in other countries to this day, persons who imagine that some men have the care of souls. Now this would stand very well, perhaps, in a church constitution; and there I might be induced to vote for it. But here, sir, it is out of place altogether; it has no business in the Constitution of our country. All that branch of the argument relating to the safety and purity of preachers, might well be addressed to church communities, but should never be heard in a deliberative body engaged in the formation of organic laws. What business is it of ours to preserve the character

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of the preacher, pure and uncontaminated by improper associations?— I believe, however, that the argument has no foundation in fact. Four fifths of the Constitutions of the States of the American Union do admit preachers into the Legislature. Once in a while, the character of a preacher may be injured: but I come from a State where preachers have participated in legislation, and at the same time have preserved their purity of character. And legislative bodies have been incessantly slandered. What is there to be seen in this hall, let me ask, that could injure a preacher's character? This is the first legislative body of which I have had the honor to be a member; and I declare to you, Mr. Chairman, that I have seen none but moral influences pervading it: I have witnessed no drunken gambols, no discreditable squabbles here. Perhaps, however, we are indebted for this high moral tone to the presence among us of religious men and religious teachers. There is a very strong prejudice against Christianity and preachers too, in the world: and were I disposed to play the demagogue, I would know which side to take, and I know that to be on the popular side, I must unite in crying out against church and state. Let me remark here that nothing has pained me so much as the remarks of my esteemed friend from Fayette upon this subject. I understand well the prejudices of the church to which he belongs, and of which he is so conspicuous and profitable a member. I regret extremely to see him taking counsel of those prejudices, and bringing his influence to bear upon the other side of this question. I was raised a Baptist, and know the preachers of that community. And let me remark that we are indebted greatly, not only to the Baptists as a people, but to a Baptist minister for the great principle of universal toleration The Baptists have been proud of this distinction and honor, and here has originated their prejudice against all religious interference between church and state. When the Sunday mail movement was agitated in the United States, by the Presbyterians, the Baptists stood forth as a well organized legion in defence of this great truth in the Bill of Rights. And the justly celebrated report of Col. Johnson, was drafted by a Baptist preacher. The greatest law givers who have figured in the world have been preachers. Wm. Penn was a preacher: the celebrated Grimki, who died recently, was a teacher of Christianity. I know many able and distinguished politicians among the preachers of different denominations. But there is another branch of the argument. Our Bill of Rights says that "all freemen, when they form a social compact, have equal rights:" and we do violate it, sir, when we attempt to exclude any freeman from his legislative rights. Say the gentlemen, by excluding minors you are equally violating the Bill of Rights. But, sir, they forget the very gist of the argument. The exclusion of minors is a general law affecting equally all classes of society. Whenever, however, you undertake to say that a given class shall be excluded, you are no longer laying down a general law, but are invading the rights of a given number of individuals. Now with regard to expediency: they say that ministers should be excluded, because if they are permitted to come into your legislative halls, church and state will be united. Sir, what evil do they apprehend, what are they attempting to guard against? Why, they have declared in that Bill of Rights that "all men have a natural and indefeasible right to worship God according to the dictates of their own consciences: that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: that no human authority ought, in any case whatever, to control or interfere with the rights of conscience: and that no preference shall ever be given by law, to any religious societies, or modes of worship." Is not that article an amply sufficient guard and security against the union of church and state? If not, I will go with any gentleman to make it stronger. But how does the exclusion of the ministers of religion from our legislative halls tend to defeat the ruin of church and state? What bearing has such an exclusion upon it? I say it has none at all. The naked question comes to this. By retaining this clause, we exclude one class of our fellow-citizens from the right to participate in making our laws. Why not exclude them also from judicial power; why not from the executive station? Is it not well known to gentlemen here, that the judiciary have much more influence over our rights and liberties than all the legislatures: that a judge at a single term makes more law than any Legislature that ever sat in this country, more law than the whole body of the Legislature can make during a session? Why not then as well exclude ministers of the gospel from the exercise of judicial powers? The gentleman from Harrison announced it as a principle, that unity in design is the secret of success, whence he would infer that one profession only is enough: and that there is no such thing as a universal genius. And where does his argument end? In the consequence that none but lawyers are ever to be entrusted with the making of laws. And he announced here, that to be a good statesman, it was necessary to be a profound lawyer. Had the gentleman forgotten Jefferson, and Franklin? And Rush was no lawyer: Washington was no lawyer. (Mr. Van Zandt explained: he did not intend to assert that it was necessary to be an attorney, or a practising lawyer, but that it was necessary for a statesman to understand well all the great and fundamental principles of law.) Jefferson had a supreme contempt for the profession; so had Washington. (He was a licensed lawyer, said Mr. Van Zandt.) Yes: he looked upon the craft of lawyers, and he left them with disgust. But to the argument. Why, sir, is a good mechanic, why a good farmer incapable of making laws? And I say, sir, and I aver it, that lawyers, above all others, should never have entered the halls of legislation. They are totally incapable of making just and wise laws.

Now, if the gentleman sticks to his argument, he would exclude mechanics, farmers, and every other class, and would raise up in our country a set of politicians, a privileged class of law makers in a Republic. I do not know, and cannot imagine a more odious argument than this. Now, sir, I ask again, what danger is to be apprehended from sending preachers to the Legislature? There is no class or division in society but has its peculiar interests, its peculiar prejudices, and is governed by its peculiar policy; and it is true of preachers as well as of any other class. What then is the policy of the preacher when he goes to the Legislature? Why, sir, if it is to unite Church and State we ought to be very careful not to exclude him, but to deprive him of the means of carrying his projects into execution. When he gets into the halls of the Legislature, he finds that you have there cut him off entirely by the adoption of that clause which says that there shall never be a union between Church and State in this country, and that any set of religious tenets shall never be established in this country. It is my belief that no well organized government can exist, unless every interest is represented. If the class of lawyers should be represented in the Legislature, it is equally necessary to the harmony of our government that the class of preachers should be represented. This necessity is founded in human nature; one class can never understand the wants, and feelings and prejudices of another, and should never be charged with legislating for it. Every freeman understands his own interest best; the lawyer understands his, and legislates with a vengeance to protect it. If I were in favor of the exclusion of any class from a due representation in the machinery of government, I should advocate the proposition to exclude lawyers altogether. For I do believe that more injury has resulted to society from their legislation, than from all other causes combined.

Mr. Moore said: Mr. President, I little expected when I first hazarded the few brief remarks in the outset of this discussion in support of the motion made by my friend from Red River, that the debate would have been thus protracted, nor would I again refer to this subject if the personal allusion of my friend from Galveston did not impose upon me the necessity of a response. He has observed that I am peculiarly qualified by nature to do honor to the profession of divinity, and he bases a lengthy argument upon the seeming evil that would result if I should arise in a legislative assembly to advocate some religious tenet, and on opposite sides should arise, the Mormon, the Catholic, the Protestant, and the several partizans of other religious denominations. Ah! sir, would indeed that I had the great endowments of a Bossuet or a Fenelon, would that with the ennobling virtues and sublime example of the latter, and the commanding, irresistible eloquence of the former of those eminent ministers, I could advocate in this assembly the great principles that should be embodied in this Constitution. Principles based upon the precepts of him, who when reviled, reviled not [illegible] principles that are the only substantial basis of civil as well [illegible] institutions. Ah! sir, when I reflect upon the ennobling virtues and

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commanding talents of those great men, ardently do I wish that the legislative halls of my native as well as those of my adopted country, might be honored by such statesmen. Their vast learning, their stupendous talents, would be exerted to establish civil institutions that would be enduring as the "Rock of Ages." Institutions that would stand through all time the pride and glory of their country. Such men would indeed in the sacred language of scripture, be "wise as serpents and harmless as doves." None but the infidel, the stolid hater of religion, should fear that such men would render the legislative halls the scene of fierce contentions, of strife and turmoil. Sir, I look forward with confidence to the day when the sublime precepts of the gospel shall be so diffused throughout the world, that not only the strifes of individuals and parties and sects shall cease, but even nations shall learn to war no more. Such we are told in sacred writ will be the ultimate effects of the religion of the Redeemer. Then why should the Christian fear to throw open the legislative halls to all classes of society, and to men of all professions? It is a slander upon religion itself, thus to disfranchise ministers of the gospel; and the very section as it now stands in this bill, conveys the idea that ministers of the gospel are the most dangerous of all classes of men. One of my friends here has classed them with idiots and minors. Such assertions seem to me, sir, to convey a reflection on one at least of the members of this Convention. But I can excuse my friends in this instance, since I am well aware that in the heat of debate, they have, like my friend from Galveston, who tells us that he has slept upon this question, become in a manner blinded by fantasies. They have conjured up bugbears, and are frightened with the creations of their own fancy The Congress of the United States, the highest legislature in the world, has long been open to ministers of the gospel: but none of the evils my friend from Galveston has depicted with such admirable precision, have been displayed there. The few, very few ministers of the gospel who have been admitted to the legislative halls at Washington, have been efficient as statesmen as well as divines, and their talents and example have had as salutary an influence as those of any other class of men. If I wished to incorporate a provision in this Constitution to exclude any class of individuals, it would not be the ministers of the gospel, the lawyers or physicians, but a class ten fold more dangerous than all these combined. I would exclude the land speculator, sir; the money speculator, those who like vampyres wish to fatten on the body politic—who would barter their country's best interests for gold, and who enter the halls of legislation only to warp the laws to advance some interest of their own, or those of their employers. Such men, sir, are like wolves in sheep's clothing, and they weigh like an incubus upon the prosperity of the State. I make no personal allusion here, sir. I speak of what has been, and what may be. If I were a minister, sir, I should say beware of these; for like the Scribes and Pharisees of old, they "are full of hypocrisy and iniquity," and would pollute the fountains of truth and justice. But as I should despair to frame any clause that could elude the subtlety of such men, to exclude them from the legislature, I wish all classes of society like them, may be permitted to share the common privileges of freemen.

The committee rose and reported progress, &c.; report adopted; and the convention adjourned until 4 o'clock P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment; and on motion of Mr. Gage, resolved itself into committee of the whole on the report of the committee on the Legislative Department—Mr. Smyth in the chair

The amendment of Mr. Brown, to the 28th section, was under consideration.

Mr. *Henderson* said: I regret, Mr. Chairman, that upon this occasion some gentlemen have taken it upon themselves to show that we who occupy the position in which I stand upon this question, are opposed to the interests of the church. I know it would be an interesting position, if we could occupy it, and perhaps it would be interesting to those gentlemen to see us all laboring together to establish a rule here, which would give force to the doctrines and energy to the endeavors of those who are laboring in this great cause. But in the ground which I take, I have not alone the interests of the churches of the country in view, but I am looking to the interest of the people. And when I repeat again on this occasion, that this is not a question which involves alone the rights of the individual ministers of our churches, but one which involves the rights of all the people of Texas, I hope that gentlemen will not suppose that I am acting the demagogue; I trust they will not rank me with that odious class of persons. When we look, sir, at the origin of this provision, when we look back to the formation of the Constitution of the United States, and the causes which there operated upon the people, I venture to declare that the appellation of demagogues is more in consonance with the position assumed by those gentlemen, than with mine. I am taking here a side of the question which has ever been unpopular; and it is obviously the weak side on this occasion, so far as regards the number of votes; I see plainly that it is to be defeated. But nevertheless I do not feel a less weight of obligation resting upon me to urge my views upon this House, and to assert the rights of those whom I represent. For, as I said yesterday, I am not here as the advocate of the clergy, but of civil and regious liberty, of republican principles. I have been called here to assist in framing a Constitution, to be presented to the government of the United States, one to which no one can point and say here or there is a single clause infringing the great principles of republicanism. Are we not told that we cannot be admitted unless we present a Constitution free from any charge of anti republicanism?

Suppose there is any single member, and there may be more than one in the Senate of the United States, who views this question as I view it, will he not be obliged to reject our Constitution? Or will it not at least afford an excuse for doing this? If we were already a portion of the territory of the United States, we might, perhaps present a Constitution without any of these fears. But, sir, I regard annexation as a matter not yet consummated, until our Constitution is accepted; until then, we are not a part of the United States, we are not in fact or in truth entitled to their protection, or to be called a portion of that country. This single consideration alone should be of sufficient weight upon this occasion: but I come here operated upon by views and opinions sufficient to govern my vote on this question, without any regard to that danger. I feel it a solemn duty to those whom I represent here, to vote against any clause in this Constitution which takes away the rights of any citizen. By one portion of the Bill of Rights we declare that all freemen, when they form a social compact, have equal rights. How, I would ask this House, do you give full bearing and effect to that declaration, if you declare that no minister of the gospel shall have the same right which you award to others? When we declare that all men have equal rights, we declare that all men, let them place themselves in any position whatever, not criminal or disgraceful, have equal rights; and does it not necessarily follow, if we adopt the report made upon this subject, that although we have said in the 2d article of the Constitution that ministers of the gospel have equal rights with us, yet they shall not have the right of coming to the Legislature and sitting with you in its deliberations? And do we not say to the people in one breath, you are free, equal and independent; and in the next, unless you exercise that freedom in the way which we point out to you, you shall not exercise it at all? We have been told, and repeatedly, that it is no more inconsistent with the Bill of Rights to say, that a preacher shall not occupy a seat in the Legislature, than to say that the most intelligent youth in the country before he arrives at a certain age, shall not be a voter, a representative, or Governor of your State. But is there any parallel between the cases? Is it true, that they say to the parson in this instance no more than they say generally to all the citizens of the country? No, sir, in his case the restriction is continued through life, or as long as he may choose to exercise the avocation of his choice. If there is any truth in this, I confess that I am unable to see it. But the great objection insisted upon by gentlemen, is the danger to be apprehended from extending this privilege; the danger of overturning the liberties of the State. That is the great argument on the one hand, whilst on the other they strenuously contend for the necessity of this provision to the preservation of the purity of the church. I must confess that I am not a very devout religionist; would to God I were better than I am! But it seems to me that the course taken by gentlemen is a little contradictory to the sanctity they profess. On the one hand they seem devoted to the interest of the churches of the country, and alarmed at the prospect of corruption; on the other hand, they say if we admit these fiends, they will destroy the liberties of the country. and overturn your government. I would ask gentlemen to state a single instance, except that referred to of Mr. Ely, in the whole history of the American government, where there has been even an intimation of such interference on the part of any church in that country? If there has been any other, I do not recollect it. Look at the history of the States formed in the U. States. Have they perceived any danger in permitting ministers of the gospel to become members of the Legislature? The gentleman from Nacogdoches informs us that so far as he has investigated the matter, seventeen States have rejected this provision, for five which have inserted it. If this should be a subject of jealousy in a State government, would it not be of much greater importance in the general government of the U. States? And I would ask whether among the really great men who have framed the Constitution of that government, there was one who thought this subject worthy of his attention? No, sir, our fathers who framed that instrument, though they knew that from that point, if at all, the attack must be made upon the liberties of the country, did not regard it as a point claiming any notice in the formation of the Constitution; and they imposed no such restriction.

They say, here is the great mass of the American people, from them you may choose your representatives. If the attack is ever to be made, it must come from that quarter. Until the Constitution of the United States is overthrown, nothing can possibly be effected towards accomplishing the end which gentlemen seem to fear, unless this section is adopted. I would ask then if it is necessary for the State of Texas to make any provision against this imagined danger? The prejudices of the American people were raised in the revolution against the established church of England; they were raised against the influence of the priesthood; against every thing tending to abridge civil and religious liberty. And they were called upon to say in forming both the general and the state governments, that they would give toleration to all sects in religion, freedom of worship to all classes of men. Imitating their example, we claim to establish here a free government: we claim the right to govern ourselves: we claim the right of worshipping God according to the dictates of our own consciences, acknowledging no master except our Father in Heaven. And I would ask, among a people as jealous as we are, if any danger of this nature is to be apprehended? If there can be any danger in allowing men to select their representatives, if they choose to do so, among ministers of the gospel? If we were now in the dark ages of the past, it might be said that the people were ignorant; incapable of seeing the dangers surrounding them; influenced not by reason, but by the prejudices and predilections of this or that sect; and that we might with propriety impose a restriction of this sort. But when we have declared in our Constitution that all men are free and equal, and independent: that man is capable of self-government; and that all have equal rights:—I ask if it would be consistent with these views to say that no minister of the gospel shall hold a seat in the legislative councils of the country? We are told by gentlemen, that if they wish to come forward, they can lay down their vocation, and in that way come to our legislative halls. Sir, it will be found to be generally the case, that when a man of that calling throws off his robes, and offers to serve his fellow men in a political capacity, he will not have their confidence: he will excite the prejudices of those who do not belong to his particular church, and the whole class of sinners. And though I am here advocating the rights of ministers of the gospel, I will take occasion to say, that unless my mind should change, unless a gentleman of that calling shall present himself under circumstances more than ordinary, I shall never vote for a minister of the gospel as a representative. But I do not wish to control the rest of my fellow citizens; they may differ from me upon this subject. I do not believe that any man who is devoted to the cause of religion, will offer himself before the people as a candidate for political preferment: but I wish to have that class of men free to do so, and the people free to choose them. Allusions have been made to opinions expressed in conversation: I will tell my experience on the subject. I must confess that a large majority of the preachers with whom I have conversed, are opposed to their holding any civil offices: they have told me that they wished the restriction to be laid. But on one occasion in my own county before I left home, I was asked by a clergyman my opinions upon this subject: and on my replying that I was opposed to any restriction, he said that though he never wished office, yet he regarded it as an imputation upon the class of which he was a member: that he looked upon it as a reflection upon the ministry of Texas to be excluded from office. And I must now say, that if ever in any country I have known a man who deserved the approbation of the community for the purity of his moral character, his excellence in all the departments of life, his ability as a preacher, and his worth as a citizen, he stands preeminent in my esteem. I have known many men occupying the position which he sustains in that country, and I must declare that I have never in my life known one whose purity of character, disinterestedness and abilities I have admired more. And now I pledge myself before this House, that if there is any man of his station who would be suspected less than all others of desiring to be benefitted by striking out this clause, it is the gentleman to whom I allude. I am well aware that in taking the course I have done here, I have not taken the popular side. I know that it has been the cry from the very beginning of the American government down to this day, that church and state must never be united. And when I take this position, I see not that I am running counter to that doctrine. If I believed it, I would say let this provision be incorporated in the Constitution, and stand perpetual. But, sir, have we seen any evidence that the clergy of this country or the U. States would take advantage of any such privilege? Until we do see it, we are bound to infer that they will pursue a pure and holy course; that such is not their disposition. Let us see by experiment whether it is or not: and if we find that such is the tendency of things, we may then guard against it. I am not disposed to accuse any man of cherishing an unholy ambition, until I have seen it in him. If we strike, as the Athenian of old said to his commanding officer, let us hear before we strike. Let us trust the preachers of the gospel with this privilege, and see if they display the ambition charged upon them; and if they do cut off the privilege: but in the name of God, before you condemn, hear and try them. And I say that when they evince such a disposition, I will be one of the first to raise my voice and give my vote against the exercise of this privilege on their part: but until then, I feel myself bound by every duty that could be imposed upon a freeman to resist to the very utmost. I have occupied more time than I intended on this occasion: but I will say in conclusion, that it is a question of vital importance to the liberties of the country; it is one by which we may defeat the great object of the labors in which we are engaged: it may afford a cause and a just cause to those who agree with me to oppose the ratification of the Constitution.

Mr. *Brown* withdrew his amendment, as there was a motion to strike out the whole section.

Mr. *Mayfield* said: I have deferred the expression of the opinions which I entertain upon the merits of the section under consideration until an issue should be fairly made up. The withdrawal of the amendment offered by the gentleman from Colorado, now for the first time presents that issue. I am aware that the patience of the committee must be greatly exhausted, and that in any remarks which I may make, I shall labor under the disadvantages which so long an attention to a subject of this kind must necessarily produce. Notwithstanding, however, the debate has assumed so great a latitude, and so much extraneous matter as it appears to me has been brought into the discussion, I will endeavor so far as I can to treat the question upon its native and individual merits. In having noted the arguments of gentlemen in favor of striking out this section, they appear to assume three distinct and general grounds: supporting, however, as I think, their side of the question, rather by broad assertion and declamation than by argument and reasoning. We are admonished on the one hand, (and it is an admonition which we receive at every step of our proceedings,) that we should be exceedingly cautious and guarded in what we do here, lest something may creep into this Constitution to defeat its acceptance by the Congress of the United States. Then we are told again that we must be extremely careful in every thing we do, lest perchance we should be found infringing the rights of the dear and sacred people, and damning ourselves and our Constitution to all time. We are again admonished that we have established in the Bill of Rights certain fixed and fundamental principles, and according to the construction of gentlemen, if any thing does not meet their approbation, it is in violation of those principles. I shall first notice the argument that this provision is an infringement of the declaration that all men are free and equal, and entitled to equal rights. Now, sir, we have made no such declaration, and if we had made it, it would not be true in fact. We have simply declared that all freemen when they form a social compact, have equal rights, and shall be entitled to equal privileges. Now I will ask gentlemen, if a free black in this country, declared so by the laws of Texas, and a party to the compact, is not as much a freeman, as any who occupies a place upon this floor, or any minister of the gospel? And yet in sections long anterior to this, these gentlemen voted without any compunctions of conscience, and without any fears that in what they were doing, they were violating republican principles, or the rights of the dear people, to exclude the African and the man of mixed blood from any participation whatever in the legislation of the country. Their fears and alarms were not raised then, though the free black is as much a freeman according to that declaration as any man here. If gentlemen would be consistent with themselves, why not come forward and vindicate the rights of the free black, and admit him to a seat and companionship with themselves in our deliberative assemblies? They may show that the political situation of the country may render it necessary that such a qualification should be introduced into the Constitution itself to limit all these general principles. If then from the peculiar nature of the case and the circumstances by which we are surrounded, they see proper in that case to adopt a qualification seemingly incompatible with a declaration formerly made, is there any thing inconsistent in this? You adopt a qualification for the purpose of placing guards and restrictions to favor liberty and sustain freedom; and yet you are told that, in doing this, you are striking a serious blow at freedom itself, tarnishing the bright name of liberty, doing injustice to the institutions of the land, casting a reflection, and fixing a blemish upon your Constitution, which may cause it to be condemned by the Congress and people of the United States, as anti-republican in its features. I believe there is not a State in the Union, which is not esteemed republican by the great mass in the United States; and if Texas presents a Constitution embodying a principle contained in that of any of those States, it will doubtless be accepted by the Congress and government of the United States. But we are told that by placing this restriction upon the clergy of the country, we are doing a great violence to the rights of the people. Now these arguments might have some force, if supported by fact, consistency and reason. But I flatter myself that no gentleman upon this floor will be startled or driven from the dispassionate consideration of this subject, by the mere declaration that the people will be injured, without its having been established fairly and justly by argument. In what respect is a restriction of this kind an injury to the people? If it is the intention to give them unlimited power and control, if no restriction whatever of a political character is to be placed upon the exercise of their judgment and their will, why not throw the subject broad cast, and allow them to elect their representatives from freemen of African blood? If the restriction in this instance is incompatible with the principles of justice, it is in the other. Then I trust that none of these startling admonitions will drive any member from his propriety upon this occasion. In my estimation, Mr. Chairman, this question depends upon higher considerations than those. For I hold that it is not true as a fact, that the incorporation of this section will endanger the adoption of our Constitution by the American Congress; that it is not true as a fact, that it will be an infringement of the rights of the people; it is not true as a fact, that it is in the least derogatory to any principle contained in the Bill of Rights. I hold that it is in conformity with our public policy for all time to come; that it addresses itself with peculiar force to the breast of every citizen of Texas. The declaration in this provision is a mere declaration, giving to a class in this country by virtue of it, a higher, more imposing and more influential attitude than they could occupy by passing them over in silence, without noticing them as a class. It is a declaration that being "dedicated to God and the care of souls," they should not participate in the strifes and cares of state. Is that declaration any injury to them as a body, is it any reflection upon the church, any anathema against the christian religion, any imputation whatever upon the purity of conduct or the course of life of that portion of the community? By no means. We merely say to them, you have high and sacred duties to perform, which must necessarily exclude you from participating in the stirring scenes of political life, in order that you may remain pure and spotless: simply conform to your profession, and live according to the vocation you have chosen, and your usefulness will be like charity itself, modest, retiring and unassuming in its walks. It is contended, however, that by virtue of a provision of this kind, we shall deprive the people of the liberty of selecting their rulers and legislators, and in many instances, of choosing the wisest and most virtuous men. It may be true, sir, that the preachers and clergy of the country, and I hope it will be so in all time to come, are wise, and virtuous, well educated, and well versed in all the branches of science and literature. But the question which presents itself is this: will their wisdom and learning, their moral worth and weight of character, be better applied in advancing the ends of society and sustaining the institutions of the land, in the halls of legislation, or in the walks of life, which they have selected for themselves? A man may be wise as a minister of the gospel, an able teacher upon all subjects appertaining to morals and the Christian religion, skilled in philosophy, learned in the sciences, and highly capable of diffusing his learning among the communities with which he may mingle: but the question is simply, whether this wisdom and learning can be best appropriated in sustaining the institutions and promoting the welfare of the country, by his entering upon the bustling scenes of political life and making his learning the foot-ball and plaything of every petty demagogue with whom he may come in contact. It occurs to me, sir, that consulting the safety of the country, and the good of society, as legislators acting for the people, or the people acting for themselves, we should appropriate that class of men to the sphere where their learning, virtue, morality or intelligence can best be directed in ministering to the wants of society, sustaining the institutions of the land, and supporting civil and religious liberty. And in doing this, that we shall do nothing incompatible either with the rights of the people, or the safety of the State.

There is another consideration, which at this time would seem peculiarly to address itself to the consideration of this Convention. In all legislation we should be directed by the condition of things surrounding us, by the political attitude of our own country and its political relations with others. It will be recollected that there is now existing a feud in one of the most powerful churches of the American Union, the Methodist; one of the most useful, and decidedly one of the most numerous; a feud which has riven it asunder. Now if I understand the cause of this division between the Southern and Eastern Churches, it was brought about by fanaticism; a fanaticism which aims a mortal blow at the institutions of the Southern States. As a consequence of this division, doubtless that class which we look upon as fanatical, will become the more energetic and active in spreading and disseminating their own peculiar doctrines, which strike directly at the institutions of the Southern States, and if carried out, will bring about a civil war in the land. If no check is placed upon the dissemination of these fanatical doctrines, may they not come among us in sheep's clothing, like the individual alluded to by the gentleman from Galveston, preaching the gospel and free grace to all men, and seeking to ingratiate themselves in our affections? May not hordes of the clergy come here, and addressing themselves under the garb and disguise of their profession to the confidence, esteem and affection of the people, acquire an influence over the churches, year after year increasing in strength, until the institutions of the country may be sapped in their foundations and overturned before we are aware of the danger? Fifteen, twenty, or fifty years, is a long time in the life of an individual, but a very short period in the existence of a people. And what we do at this time, should be done with an eye to the future; and we should as carefully guard against evils which may arise fifty years hence, as those we may anticipate on the morrow.—Then every thing considered, it appears to me that the prosperity and happiness of the country will best be enhanced by retaining this worthy and meritorious class of men exclusively in the vocations of life which they have selected. Ministers of the gospel should be above suspicion: they should be free from the contaminations of the world; in going forth to *do good, they should be not only pure and spotless, but unsuspected.*—Let one of any particular denomination mount the rostrum or the hustings, or enter into a discussion upon any political subject whatever, and I will appeal to the candid reflections of every gentleman, if he does not inflict an injury upon his church, and cast a slur upon the Christian religion itself.

Before I take my seat, I will notice a few remarks which fell from the gentleman from Fannin. He contended that the article is derogatory to the honor and high position of the churches of the land, and to the Christian religion itself. As I conceive, it involves no assault or slight whatever upon the church or religion. He contends further, that if any given class is to be excluded, we should also exclude another class against which his malice is particularly directed. In his anathemas against that class to which, as I believe, he unfortunately belongs, it occurred to me that he indulged in some reflections which were unjust, and wholly uncalled for. If I understood him correctly, he stated that he believed greater evils had arisen in legislation, by the action of lawyers, than from any other cause. If the gentleman is correct, it is my peculiar misfortune likewise to belong to that class; and whatever may be his opinions upon the subject, I shall always be proud of my profession. I hold that all professions are on a level: yes, sir, the humblest mechanic who lives and supports himself by the labor of his hands, has a high and honorable calling. The man who follows the plough, and makes his living by the sweat of his brow, has likewise a highly honorable occupation. He who devotes himself to his moral and religious duties as a clergyman, has not only an elevated and honorable profession, but one of great sacredness and responsibility. So far, however, as concerns the profession of the law, and those attached to it, it is not true, and the political history of states and nations will show the fact, that evil has never sprung from the legislation of lawyers as a class in any country. On the contrary, Mr. Chairman, they have been the first, whenever liberty has been assailed or the rights of man trampled upon, to step forward in the cause of humanity, and vindicate those eternal rights and sacred liberties, not only by argument, but by actions, not only by words, but by deeds. They as a class have stepped forward at all times, and the history of all free states will establish the fact, in the cause of freedom: they have been first in the cabinet, and likewise first in the field. Their profession has necessarily directed their attention to the great doctrines and the eternal principles of justice and right, to the basis of free governments and the foundations of civil and religious liberty; and with but few exceptions there have been no black sheep in the flock, none who have abandoned the standard of their country in time of danger, or inflicted the stabs of deleterious legislation. The immortal Jefferson was a lawyer: Hamilton was a lawyer: the Lees were lawyers. Look at the bright circle of the names of American patriots who signed the Declaration of Independence, and again of those who formed the Constitution of America, and you will find them occupying a high position there as a class: you will find men, who not only did honor to their profession, but to the cause of freedom and humanity throughout the world. Such is the true character of the profession to which the gentleman belongs, and which he has so much reviled upon this occasion. The clergy also have done great good: they have promoted the cause of civil and religious liberty: they too have stood by the standard of their country, and maintained the eternal principles which give to freemen the enjoyment of their rights as such. And in this discussion it did not seem to me that it was necessary that reflections should be cast upon any class in the community. Entertaining the opinion, however, which the gentleman from Fannin seems to entertain, if he is acting justly, he should move the expulsion of some eighteen or twenty gentlemen from this House: otherwise, the liberties of Texas may be destroyed, a blemish be cast upon republican institutions, and certain injury result throughout the world.

Mr. *Howard* said: Being called upon, Mr. Chairman, in common with others, to vote upon this question, and as it has been thought worthy of so much discussion, I shall give my reasons for the vote I shall give. I shall never condescend to vindicate my motives in any act which I shall perform here; my action will be placed upon the journals, and I shall abide the consequences. Nor shall I condescend here to talk about Democracy or Federalism, that never ceasing theme of declamation. I leave my acts and their consequences to say what they are. If I might be allowed to paraphrase the declaration of a great man, "I have read the book of human life somewhat, and other books a little."

I shall endeavor to deduce the reasons of my actions clearly from principle, whether it will please or not. Not that I am indifferent to consequences: it would be ridiculous to claim an exemption from the influence of human opinion: I do not.

I do not place my vote upon the ground that this provision would violate any principle of the Bill of Rights. The Bill of Rights was anciently an enumeration of privileges conceded by the crown. But here the people who make the Constitution, make also the Bill of Rights; and it has no peculiar sanctity for me over and above the rest of the Constitution.

Neither do I place it upon the ground that by the insertion of this article we may perchance endanger the acceptance of our Constitution by the Senate of the United States. I do not believe that body will care very materially about any provision which we may adopt of this kind.

But I shall place it where I think it belongs, on the ground of abstract right and justice. It is a principle of American liberty and human rights that all men should be equal before the law, unless the safety of the community require a different principle to be established. If then it can be made out that preachers of the gospel are dangerous legislators, then it is right to exclude them, and then it is consistent with the Bill of Rights, and consistent with every other principle of human government. But unless it be so made out, proved and clearly proved, that the particular class against which any provision is aimed, are unsafe depositories of political power, then I say it is an infringement of political liberty: it is one which the people have a right to arraign. I have heard no argument to satisfy me that this is a dangerous class of men; when I do hear it, I shall be as free as any one to exclude them from legislation. Sir, we are creatures of education and circumstance; Pope says, as we are taught, we believe. Our forefathers, in emancipating themselves, acquired a deep hatred for the connection of church and state; and from this principle, they ran, as I conceive, to an overscrupulous length. This provision, however, has found its way into very few Constitutions. It does not reach the mischief which it is intended to prevent: it can have no connection with it whatever. Then it is time that we cast aside the prudish notion we have in this country, that every thing which a minister of the gospel does, is pregnant with a connection between church and state. The Sieur de Tocqueville, who has published a book upon the United States, a book which has met with high honor and great approbation, so much so, that he has been styled the Montesquieu of modern times, has said that during all his residence in the country, travelling from one section to another, in his conversation with the clergy of all denominations, he never found one of them who would advocate any connection whatever between the church and the state. I never in my life have heard one of that class of men say that he was in favor of such a connection. And is there then any the slightest danger in admitting ministers of the gospel to a seat in our legislative assemblies? What is meant by the connection of church and state? Is it that men of any particular denomination are allowed to enjoy a particular office? No, sir: it is that particular modes or regulations of the church are fastened upon the people, protected, secured and guarantied by the government: that the sanction of the law of the land is attempted to be thrown round the laws and regulations of the church. Could the bare election of a preacher have that effect in itself? It strikes me as too plain for argument. It cannot have that effect: especially when there is a provision in the Constitution prohibiting it: and even if one of that class should be elected to the Legislature, if he has any desire to bring about such connection, there is a provision restraining him and the body of which he is a member. I think then, this is all declamation: it has no solid foundation either in justice or reason. Sir, when was it that there would have been any justice in the United States, in saying that such a connection has ever been attempted? But one act has been stated here, and that act had no relation whatever to such a connection; its whole object was simply to prevent the transportation of the mail on the Sabbath; and how that could affect the connection between church and state, would require some stretch of mind to understand. This talk about church and state was a mere pandering to the public taste and public prejudices; it was intended merely to tickle the ear, and not to satisfy the judgment. If then there is no reason of public policy which requires that ministers of the gospel should be excluded, this provision is in violation of the principles of our Constitution: for it denies the people the right to select their representatives from a class of men otherwise eligible. There I rest the whole question.

But, sir, I have another objection. It is giving the clergy an importance which they would not otherwise have. I have no fears of religious denominations, or of the priesthood of those denominations, so long as the principal sects are antagonistic. But the moment the state attacks the church, it brings them all together into one united band of resistance; and that may produce some danger, it may do more to bring about the connection between church and state, than all their unstimulated efforts could do. They will confederate for resistance to what they conceive to be wrong, to what they view as an attack upon their fundamental rights. For my part, if that time shall ever come, I had rather take refuge in the bosom of mother church, than see political power pass into the hands of the confederated Protestant denominations.

I have also another objection. If we leave this section to the salutary regulation of public opinion, it is not probable that at any given session you will have three clergymen in either branch of the Legislature. But if you place a club of this kind in their hands, you will certainly see a party spring up to wield it. Could there not be demagogues in the pulpit as well as in the halls of legislation? For though I hold their profession in high estimation, though I respect piety and learning wherever I see it, yet I believe that ministers of the gospel are like other men; they are affected by human passions, feelings and sentiments as other men are. If then you attack their fundamental, their abstract rights, it is easy to see that parties will spring up; and you will find the clergy of all denominations taking sides in the contest, and using their influence to elect a candidate entertaining their particular views. I would avoid all this strife by expunging the needless provision having a tendency to produce hostility of this character. The gentleman from Galveston, whose clear head I am sorry to see so much warped as I conceive it is upon this subject, admitted, that although the evils so much dreaded might arise in time, none had yet arisen. Sir, I am opposed to abstract legislation. It is foolish, and often more than foolish. Can you select any class of men in the community, to whom you are willing to say, we will proscribe you; we will prohibit you from enjoying the advantages of office; not because you are dangerous now, but because at some future time you may become very troublesome and vexatious citizens? It strikes me that the injustice of such a position must appear clearly to the good sense of every deputy upon this floor. Then, on account of its injustice, unless its necessity should be clearly made out, I would vote against any odious distinction of this character.

In the wide range given to this discussion, the subject of abolition has been brought in. Now I understand that there has been a division in the Methodist church. And here let me ask, are you prepared to say, because a man's views do not square with yours on this or any other subject, that you will exclude him from the legislative councils of the nation? But I think this a particularly unfortunate allusion in connection with this subject. Are you willing to say to the Southern preachers who have thus stood by you even to the division of their church, that you will confound your friends and your enemies; that you will place those who have maintained your rights on the same footing with those who have advocated measures calculated to destroy them?

But there is another reason why I shall vote for striking out this provision. It is this—You cannot, sir, if you wished it, eradicate the feeling of religion from the human mind. It is the governing principle of the universe. Even the savage maintains the worship of the Great Spirit: there is no country, no people, without a religion. And for my own part, I would prefer even the heathen mythology to no religion at all, or unadulterated Atheism. You cannot prevent the existence of a religious feeling in the community. It is a principle of human nature. Now, sir, is there any great interest which is not entitled to be protected, to be secured, nay even to be represented in any system of laws and government for a people or community? Is it not, I had almost said, a democratic, but I will say an American principle, that all interests are entitled to be protected? You do not proscribe the head of the Jewish Synagogue, nor the lecturer on Atheism; and I would ask, by what rule of impartial justice do you single out the minister of Christ as the object of special condemnation? I say, sir, that unless the class attempted to be proscribed is dangerous, and not to be trusted, we have no right by the laws of God and man to deprive them of political privileges. There can be no fear in this country of any connection between Church and State. For sects are continually multiplying; the churches are dividing more and more; and the Catholics themselves have taken the ground and published their opinions that there should be no such connection. A restriction of this nature strikes me as gratuitous and uncalled for, and especially as it concerns the Protestant sects. What were the principles of Luther? And since preachers have been talked about there has been no other one man whose deeds are recorded in all history who has done as much for civil liberty as Martin Luther. He was the author of the great impulse given to the human mind, of the great spirit of inquiry, of the great feeling of resistance to oppression, of the great impetus which made men refuse longer to be trampled upon either by the rulers of the Church, or the crowned heads who ruled in conjunction with them. It was his principle that there is no connection between God and Mammon; that there should be no connection between

Church and State. It was a great principle of the reformation, a principle in accordance with the views and feelings of the moving spirits of that great work of reform in morals and government. I think this suspicion wholly unfounded and uncalled for. So far as relates to the political principles of the Church. to the organization of a religious party, I consider it a matter of very little consequence. There will never be many preachers in the Legislature. And it does strike me that it will be in season to attack a class, when that class shall attack the government or the fundamental principles of society. For myself, I will not go out of the way to attack any class of men; but above all, I conceive it inexpedient needlessly to attack a class which to a great extent must have dominion over the human mind. And do you imagine that you can reach the seat of that dominion by excluding them from places of trust and honor, arraying them by your injustice against the government itself? Sir, their power is too deeply seated. It cannot be eradicated by any act that we can do here. Why, then, array this interest against the government? It strikes me as the height of folly.

I agree that the minister should keep to his calling. I agree that the lawyer who wishes to attain to eminence, fame and usefulness in his profession, ought never to step his foot within the halls of legislation; neither should the physician. But because we might give them that advice, we should not go quite so far as to say to them, I know better than you what is best for you; in order to make you a great lawyer or a profound jurist, it is expedient to withdraw you from the duties of public life; therefore you shall not enter the halls of legislation. We may give the clergy all the advice we please upon the subject; it does not, however, thence follow that we have the right to impose this restriction, unless the public good, and the interest, security and safety of society demand it. If they demand it, if that is proved, then I go with you; but I am not to be influenced by a vague terror of what may happen some fifty or sixty years hence. Sufficient for the day is the evil thereof; it is a very good maxim in legislation as in other things.

I am aware that I have been very desultory in my remarks; still they embrace the reasons which will govern my vote upon this question.

The qestion being taken, the Convention refused to strike out the 28th section.

On motion of Mr. Gage, the committee rose, &c., and the Convention adjourned until half past 8 o'clock to morrow morning.

Wednesday, July 23d, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Clark, the Convention resolved itself into committee of the whole, on the report of the committee on the Legislative department. Mr. Van Zandt in the chair.

Mr. Lusk moved to insert an additional section after the 28th, as follows:

"No person who denies the being of a God, or a future state of rewards or punishments, shall hold any office in the civil departments of this State." Adopted.

In the 30th section, Mr. Moore moved to strike out "not taxed."—Lost.

The question being on the adoption of the section,

Mr. *Lewis* proposed to amend by striking out after the words "according to," "the number of qualified electors," and inserting "free white population" or "free population," and for these reasons. As the section stands, it makes qualified electors the basis of representation. Now this may very well indeed suit some of the counties; but it will much better suit the towns and cities; for in them you will find a much greater proportion of population without families than in the country. Take the city of New Orleans; with qualified electors as a basis, that city would be entitled to a much larger amount of representation than the rest of the State. In the city of Galveston, according to the general population; there is certainly a much greater number of electors than in any of the counties, and in some of the large planting counties the proportion of electors to the general population will be much greater than in some of the rest of the counties: for there, as in the cities, you find an unsettled population, a great number of persons without families. In the cities there is a large number of clerks and adventurers, also without families. If then you make qualified electors the basis of representation, you will be unjust to this larger population.

Mr. *Love* said he did not think that the proposition of the gentleman from Montgomery would affect any counties in the Republic, except Galveston, and perhaps Harris. Nor was he certain that it would affect Galveston at all. Children don't die there. There were 250 children at school there when he left home; and the small ones are very numerous. It was not on account of that county that he should object to the proposition, but because it was in violation of every principle of republican government. Taxation and representation must be equal.

Taxation must be based upon military service; and if you do not represent a man, you cannot force him to do military duty.

Mr. *Runnels* said, that he should oppose the amendment. It seems to be a well settled principle here that every free male person of twenty one years of age shall be entitled to vote, and to equal privileges of a political character in all respects. Then if this is a correct principle, by what process of reasoning can you exclude one portion of the community from the right to be fairly and equitably represented in the Legislature of the country? Do women and children pay taxes? They do not. You place a capitation tax upon every freeman twenty-one years of age; and you place them all on an equality with regard to personal and political rights. Then will you deprive a portion of them of an equal weight in the legislation of the country? Will you give a portion of the country an advantage over other portions having equal rights and equal privileges of a political character to be acquired under the Constitution which you are about to adopt? The effect of the amendment must be obvious to every gentleman who will investigate the subject for a moment. It is to exclude the larger planting portions of the community, which are and will be the heaviest tax paying portions from their due weight in representation, and to increase that of those paying a less tax, without regard to due proportion in numbers. If you carry out this principle, you will make it desirable to go out of the country, beyond the reach of such a Constitution and government. If you exclude taxation and property qualification of every kind, place your electors duly qualified upon the same footing all over your State. Was there a gentleman in this Convention, who could seriously urge such a proposition? It seemed to him that nothing could be more preposterous. All the arguments from reason and justice were in opposition to such a scheme. He was not disposed to trouble the committee with any further remarks upon the subject.

Mr. *Lewis* said, that he did not remember any of the States except Virginia, and perhaps North Carolina, where property is represented. Virginia has a property qualification for voters, and in the apportionment of representation to the several districts, reference is had to property. That State is divided into three departments, in each of which the representation is arbitrary, it is true, but founded upon property. In North Carolina there is perhaps some property qualification influencing the election of Senators; but not the House of Commons or lower House. And he would venture to say that white population in a majority of the States constitutes the basis of representation: so he thought it was in Mississippi, and so he was certain it was in Alabama. He would read that portion of the Constitution of Alabama, relating to the basis of representation. "The General Assembly shall, at their first meeting and in the year 1820, 1823, 1826, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the State, and the whole number of the Representatives shall, at the first session held, after making every such enumeration, be fixed by the General Assembly, and apportioned among the several counties, cities or towns, entitled to separate representation, according to their respective numbers of white inhabitants, &c." He was inclined to think it was also the basis in all the interior States. It was not the basis in Louisiana, because it could not be made so, on account of the powerful influence exerted over the action of the Convention by the city of New Orleans. As to the justice of a property basis, whether negro property, landed property or cow property, whether direct or indirect, it is equally unjust and inequitable. In the planting counties the proportion of electors is certainly great. For instance, take the counties of Brazoria and Matagorda: they will consist of large plantations, each having its overseer without a family. Then a county having a small population, but voting some three or four hundred strong, will have as great a representation upon this principle, as a county numbering six or eight thousand souls, and voting also three or four hundred. In this case a portion of the white population will not be represented at all. In all commercial cities there is a floating trading population, with no families, who are here to-day, and gone to-morrow. Should no provision be made to guard the country against the influence of such a population?

Mr. *Armstrong* said he was opposed to striking out. He thought he noticed in the remarks of the gentleman from Montgomery a disposition to create the impression that this House in supporting the report, would evidently be supporting a property qualification. Now he could not see it in that light. He took this view of the subject, that the qualified voters of the country only are entitled to the political privileges of the government, as they are those upon whom its burthens fall. Other portions of the population are under the protection of this, and their rights are of a different character. Then why give them influence in representation, when they are not authorized to vote? Why give them a power and control at the ballot box to which they are not entitled under our free government? What difference would there be between authorizing women and children to come up to the ballot box and vote, and giving them such a control as this? The proposition, if adopted, is simply an encouragement to the acquisition of women and children, which is indeed laudable; but perhaps this consideration is not sufficient to entitle them to representation, unless they should be authorized to vote in person.

Another consideration: the expense attending the designation of the white inhabitants is enormous, compared with that of obtaining the number of qualified electors. The number of votes is easily known in consequence of frequent elections, but it is impossible to ascertain the number of women and children with any accuracy without incurring the expense of a census.

Mr. *Runnels* said: That he would suggest to the consideration of the gentleman from Montgomery, whether it would be just and equitable if Brazoria county, with about four hundred voters, and exceeding one thousand in population, pay a tax equal to that of Montgomery, with a voting population of twelve hundred, which, multiplied by five, would give that county a white population of six thousand, to give Montgomery county six times the representation in the Legislature, of Brazoria, perhaps, not three times the number of qualified electors. Would it not be very unjust and unequal? This system would give the qualified voters of one section of the country four or five times the influence possessed by the qualified voters of another section. It is true, as the gentleman remarked, that portions of the country will consist almost entirely, of large plantations, where overseers will be employed, having no families to attend to. But shall these counties of equal ability in paying taxes with others differently situated, be deprived of their due representation according to the number of qualified electors? He was claiming nothing more upon the same principle that every free white man is entitled to vote, and equally bound to contribute to the support of the country, he is entitled to equal weight and privileges in respect to representation.

Mr. *Scott* said: That he did not rise for the purpose of making a speech. In his own opinion this was not a matter of much interest to the section of country in which he lived. He was at a loss to understand the argument of the gentleman from Brazoria, in contending that by the basis of representation proposed by his colleague, (Mr. Lewis,) the representation of the tax paying counties would be diminished. He thought it could only apply to a city population. The city of New Orleans, for instance, and we may have some upon our coast approximating to it, has, frequently at the time of elections, a floating population perhaps entitled to vote. If the basis of qualified voters should be rejected, and that of the free white population adopted, he could not see how Brazoria would be deprived of her due representation any more than Montgomery; unless you say that there are fewer women and children in the county of Brazoria, according to the number of qualified electors than in Montgomery. He thought the argument good in its application to a city population, but not to a planting population. It might be, that in the county of Brazoria, and some others, there were less women and children according to qualified electors than in other parts of the State. Whether the case or not, he would not now undertake to determine. But until it should be determined to be so, he could see no reason why the planting counties should oppose this basis. He believed that the lower part of the country was less congenial to health, and hence might have a less proportion of women and children than other sections. He would ask if widows and orphans paying a tax, are not entitled to any representation? And the more unhealthy parts of the country contain, it may be, more women and children who have property paying taxes than the portions further interior.

Mr. *Hemphill* said: It has been stated that most of the States, except South Carolina, had adopted free white population as the basis of representation. In that State it is based equally upon wealth and population, or taxation and population. Of the number 124, sixty-two represent population, and sixty two taxation of every species, whether direct or indirect. It is perhaps unnecessary to state the reasons which entered into the compromise of 1808. Previously to that time, the lower portion of the country had all the slave population, and with it all the power in the State; while the upper portion consisted chiefly of free white population. After a long struggle between population and wealth, this compromise was settled upon. And since that time the upper counties have also filled up with slaves. It was always considered that any given number of slaves in any country would exclude nearly the same number of white people. And it was argued that the white population was excluded from the lower portion of the country, and ought not in consequence to be deprived of all political power. Some of those counties which contributed more to the support of the State than the upper counties, had as much representation with fifty or sixty voters as some of the upper counties with a thousand He should not enter into a general discussion of the subject. He should only say, as a political axiom it was by no means true that representation should be based upon free white population. It may be stated as a truth, in that part of the Union north of Mason's and Dixon's line; but when you come south of it, there are so many exceptions to it that the reverse is more nearly correct as a political axiom. This question was argued with great force by Governor Morris and others in the Convention; and it was more than a week before the South could succeed in getting a representation for three-fifths of the slave population. Having slaves among us, all these general political truths must be accommodated to the interests of the country. The truth that men are born free and equal, is perhaps undeniable in the Northern States. but at the South it is not only untrue, but preposterous and absurd. The maxim that representation should be based upon population, is not so entirely untrue, but it is altogether unsuitable to our circumstances. It is a maxim in the North that slavery is an evil and a curse; and it is equally a political axiom in the South that slavery is not an evil, moral or political, but a benefit.

The amendment was thereupon ordered to be made

Mr. Jones moved to strike out "40" and "64" and insert "30" and "45," and in the last line to insert "80" in place of "100." Lost.

Mr. Moore moved to insert 150,000. Adopted.

Mr. President Rusk moved to amend the first part of the section so as to read "It shall be the duty of the Legislature of the State in the year 1848, and every five years thereafter." Adopted.

On motion of Mr President the 31st section was stricken out and a substitute proposed by him inserted.

In the 32d section, Mr. Cazneau moved to strike out all after "1850," and insert "after which time the seat of government shall be located by the people."

Mr. President *Rusk* said: I shall vote for that amendment because I desire to see the seat of government settled somewhere. I intend hereafter to offer an additional section providing for an election to be held in 1849, to establish the permanent seat of government. This seat of government question is one which has long caused a great deal of useless discussion and strife in the halls of legislation. I am disposed for many reasons to place it at the city of Austin until the year 1850. It is not a matter of much interest to the people in general where the seat of government is placed. The reason I desire to see it permanently located somewhere is this. If we leave it open, the attention of the first Legislature, which will have a good deal of important business to perform, will be attracted to this all engrossing subject. The first Legislature will have to pass laws providing for the transition from a separate Republic to a State government, for the arrangement of landed estates in which all the people of the country are deeply and vitally interested, for the settlement of our Indian affairs, and upon other subjects of importance. If then the vexed question of the seat of government is out of the way, the members of that body will devote themselves to the consideration of these important matters with much more calmness and deliberation than could otherwise be expected. The first seat of government established in Texas, opened the door to more fraud and corruption than any thing else which has ever come before the people. In 1836, when the Republic of Texas did not owe a million of dollars; when her arms had been crowned with success, and the attention of the whole country was called to the first Congress which sat for the purpose of establishing those principles which should secure the rights, liberties and interests of the people, that question was thrown before them; the seat of government was established at the city of Houston for purposes of private speculation and individual benefit; the proceeds of all the lots were pocketed by these speculators, and not a dollar was appropriated to Texas. This I conceived to be wrong, wholly wrong in principle. This was the first step, and it was followed by others equally wrong and ruinous. I propose to leave it alone till the year 1850, and then it can be permanently established.

The amendment was made.

Mr. *Moore* moved to strike out "the city of Austin, the present seat of government," and insert "the city of Houston," and addressed the Convention in support of the motion as follows:

In making this motion, Mr. Chairman, I will observe that I only act in accordance with the wishes of a large majority of the people whom I have the honor to represent. And in asserting the claims of that section of the country to the consideration of this honorable body, I would do nought unfair, dishonorable or unjust to the people of this place, or any other portion of the country. The people whom I have the honor of representing here, I believe, yield to none within the limits of Texas, in their desire at this time to obtain harmony in the nation's counsels, and if they could believe that it could be secured by voting to locate the seat of government here at this period for the term prescribed, they would as cheerfully yield their claims as the people of any other section. I know that in this case, a number of other places have been named I shall speak injuriously of none—I shall not speak one word of injury of this place. I believe that in all contests, he who wishes to act fairly, will wish the peculiar object of his regard to succeed on its own merits. I am willing to admit, Mr. Chairman, that Austin has peculiar advantages. I know its situation is regarded as one of the most healthy within the limits of the Republic. I know that this fertile valley will always furnish ample resources for the great body of people which will be located here. I know that among these hills, villages and towns will spring up like magic, and the spires of churches will tower to heaven amid these forests and over yon fair lawns. I believe that factories will be seen in operation upon this lovely stream now noted for its bounding cascades. I know that the air which blows over yon blue mountains is ever pure. I believe too that the citizens of Austin have peculiar claims. When deserted by the government, and left alone to defend their homes from the savage, in the vicinity of the most powerful Indian tribes, whose hunting grounds even are adjoining the skirts of their city, they have stood nobly to their posts, and done battle to secure the property belonging to the government from the invading touch of the savage. Congress, as I conceive, unjustly, took the seat of government from Houston and located it at Austin; and by the most solemn pledges of the nation, declared that it should remain permanently here, and authorized the lots to be sold out, pledging the faith of the nation that the value of lands purchased here, should be forever, or for a long term of years increased by the permanent location here of the seat of government. But, sir, whilst I will admit all this, I will also revert to the claims of the city which I have the honor to represent, together with its vicinity. Houston also has claims, not only upon the sympathies, but upon the honor of this country. The Congress which met at Columbia passed a law, that it should remain the seat of government until the year 1840. It was a solemn contract made by the government with the people of that place. Many persons went there upon the strength of this pledge, and purchased property, from the expectation that the seat of government would have remained there. In violation of that law, in violation of right, it was taken from that city, and located here. Therefore, as I consider, it has claims so far as a contract is concerned, equal to the city of Austin. Now let us speak of the local advantages of the city of Houston. I will speak so that I cannot be contradicted by any record which may be brought at any time. When the number of its population is considered, it is as healthy as any place within one hundred and fifty miles of the coast, not excepting Austin itself. This may seem strange to honorable members who have listened to the foul calumnies and slanders cast against it on account of the epidemic of 1839. But since that period it has been remarkably healthy; and it will compare favorably, in point of mortality with any of the larger cities in the Union. At the time referred to, it will be recollected, there was a great crowd of emigrants rushing into the country: the streets, hotels and boarding houses were crowded almost to suffocation; and they brought with them also the pestilence. All places are subject to pestilential epidemics: they may prevail even in cities regarded as the most healthy· With that single exception, Houston has been remarkably healthy. And it is advantageously situated in other respects. Eight public roads leading to all the principal cities and towns within the limits of the Republic, centre there; together with a great highway towards the sea by means of navigation. In other respects it is central. It is so situated, perhaps, that the great body of the population can have access to it more readily than to any other point in the Republic. It has immediate communication not only with every important point within the limits of the Republic, but also by its channel of navigation it is connected with the chief commercial cities of the U. States. We may look forward to the day, perhaps not distant, when it will be connected with New Orleans, New York, and perhaps Baltimore, by lines of steamers. The people of that city, though deserted by the government, and suffering under great embarrassments and difficulties, are possessed of such peculiar, indeed, I may say, indomitable energy, that they have gone on through every discouragement and overcome all difficulties. It has been constantly advancing and improving, not only in wealth and resources, but also in its morals, and it will now bear a comparison, I say it with confidence, with the best regulated cities throughout the United States. I feel pleasure in asserting this for my fellow-citizens. I have travelled in many sections of the U. States, and I have never known a city where better morals prevail, or where there is more disposition to treat each other with kindness. There are other advantages attending that peculiar location: but I will not detain the Convention with arguments in favor of the place, that may fall unheeded on the ears of gentlemen around me. I know that they have their local prejudices, which may yet prevail. There are individuals who have firmly and fully made up their minds to vote for a particular point; and I cannot expect by any arguments of mine, even if enforced with the eloquence of Demosthenes, on a question like this, to change one single vote here. I thought it, however, my duty to the section of country which I represent, and also to the country at large, to state here succinctly and briefly, and at the same time with decorum and honesty, the peculiar advantages of the place which I have the honor to represent: and I trust that my honorable friends around me will receive my remarks with kindness, recollecting that I have made no charges against any other place or section, but have only spoken of the merits of my own particular city. I wish an honorable contest; and I will cheerfully abide the decision of the Convention, whatever it may be. I am anxious that the proceedings of this Convention should be characterized by harmony, wisdom, and prudence. I wish, and we all wish, that all sectional feelings should be put to rest, and all great exciting topics silenced, that the great interests of the Republic at large may prosper. And if the Convention deem it expedient and just to locate the seat of government here, I shall willingly abide their decision.

The question was put, and lost,

Mr. Hemphill moved to strike out "Austin," and insert "Washington." Lost.

Mr. Young moved to strike out "Austin," and insert "Tahuacana Hills." Lost.

Mr. Forbes moved to insert "Velasco," observing that it abounds in fish and oysters, and has a delightful sea breeze. Lost.

Mr. Cuney moved to insert "San Felipe." Lost.

Mr. *Scott* moved to insert "the town of Huntsville, in the county of Montgomery." He deemed it unnecessary and useless to say any thing, as he believed every man had made up his mind, But if gentlemen would look at its central location and convenience, he thought they would agree with him that there was no other place more suitable for the seat of government.

Lost.

Mr. *Navarro* moved to strike out "Austin." and insert "Bexar." He said that if the seat of government were moved there, he would give one league of land for the benefit of the public.

Lost.

Various other motions of a similar character were made and lost; and the section was adopted as amended.

Mr. President *Rusk* offered an additional section relating to compensation, similar to the first part of section 31st, in the report, which, with a slight amendment, was adopted.

Mr. President *Rusk* also offered an additional section, providing for the location by the people of the seat of government in 1849, and giving the Legislature the right to select one of the two places having the highest number of votes, unless one place should have a majority of the whole number of votes cast.

Mr. *Young* proposed to substitute "a plurality of the votes."

His object was not to have this perplexing question last for several years. He wished to keep it forever out of the Legislature. And it appeared to him that this question should be left to the people directly. If it is to be left at last to the Legislature to fix the seat of government, why not come to this conclusion at once, and say that the people shall not vote for it? No doubt several places will be nominated, and in this way the people will have no say-so in the matter at all. He thought the place getting the highest number of votes, would in all probability, be the choice of the people.

Mr. *Lewis* agreed with the gentleman from Red River, that if this queston were to be left to the Legislature in the contingency provided for, it might just as well be submitted to that body at once. At all events it is certain that on the first balloting, there will not be a majority for any particular place. And this proposition amounts, under the circumstances, to nothing more nor less than to give the location at once to the Legislature. He thought the section could be so amended as to make it acceptable; for certainly he would be opposed to the location of the seat of government by the Legislature. Nothing will give entire satisfaction but to leave it to the people. If then no choice should be made on the first balloting, he would propose that it should be referred again to the people; and if no place should then receive a majority of all the votes, let the place having the highest number of votes be the seat of government. He thought the whole country would then be satisfied. He would therefore propose an amendment to that effect.

Mr. *Young* said that he would accept the amendment with one amendment, that if there should be no choice at the first election, the two places having the highest number of votes should be taken for the second.

Mr. President *Rusk* said he should vote against it for this reason, it might take two years longer: it would be better to settle the question at once by the Legislature.

Mr. *Young* said, that to obviate objections, 1849 might be stricken out, and 1848 or 1847 inserted, so that the matter would be finally settled by the year 1850.

Mr. *Jones* said that he was in favor of the additional section as it stood. If at the first election no place should receive a majority of all the votes, the representatives of the people in the Legislature at one simple balloting could settle the question, as satisfactorily as in any other mode; and the people would be saved the trouble and perplexity of being called to vote upon it.

Mr. *Jewett* thought the only way to settle the question properly was to leave it to the direct vote of the people: thus avoiding the dissatisfaction and other evil consequences which had been the result of former locations of the seat of government.

Mr. Caldwell then proposed to amend by saying "the next annual election." Lost.

The amendment of Mr. Young was then adopted.

Mr. *Mayfield* suggested that there was no provision made for counting the votes.

Mr. President *Rusk* moved to strike out "1849" and insert "1850." Adopted.

On motion of Mr. Forbes, the vote adopting Mr, Young's amendment was reconsidered, and the amendment was then withdrawn by the mover.

On motion of Mr. Lusk, the committee rose, reported progress, and asked leave to sit again. Report adopted; and soon after, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment; and on motion of Mr. Gage, resolved itself into committee of the whole on the report of the committee on the Legislative Department—Mr. Darnell in the chair.

Mr. President Rusk withdrew the section offered by him, and substituted another in lieu of it, which was adopted.

On motion of Mr. Van Zandt, the Convention rose, reported various amendments, and asked to be discharged, &c. Report adopted.

The amendments of the committee were then taken up.

The first amendment of the committee is in section 1st, 1st line—to strike out the word "White."

On motion of Mr. Lewis, a call of the House was made; and, on motion of Mr. Young, the further call was suspended.

The question was then taken, on the adoption of the amendment, by ayes and noes, as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Bache, Brown, Bagby, Caldwell, Cazneau, Clark, Cunningham, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Howard, Holland, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R., R., Lumpkin, Lusk, Lipscomb, Mayfield, Miller, Navarro, Parker, Power, Rains, Scott, Smyth, Standifer, Tarrant, Van Zandt, White and Wright—42.

Noes—Messrs. Burroughs, Cuney, Darnell, Davis, Hicks, Hogg, Lewis, Love, McGowan, McNeill, Moore, Runnels, Wood and Young—14.

So the amendment was adopted.

The amendment of the committee, in 1st line, after the word "shall," insert "have attained the age of 21 years, and who shall," was adopted by the Convention.

The following amendment of the committee was also adopted:

Add, at the end of the 1st section, "provided, that no soldier, seaman, or marine, in the army or navy of the United States, shall be entitled to vote, at any election created by this Constitution"

The amendment of the committee, to strike out the words "General Assembly," wherever they occur in the report, and insert the word "Legislature," was adopted by the Convention.

The amendment of the committee to the 2d section, to strike out the words "as electors," and insert "at elections," was adopted.

In the 7th section, 5th line, the amendment of the committee is as follows: strike out "twenty-five," and insert "twenty one;" upon which, the ayes and noes were called, and are as follow:

Ayes—Messrs. President, Anderson, Armstrong of Robertosn, Baylor, Bache, Brown, Burroughs, Clark, Cunningham, Darnell, Davis, Evans, Everts, Gage. Hemphill, Henderson, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Latimer of L. Latimer of R R., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield McGowan, McNeill, Miller, Moore, Parker, Power, Rains, Runnels, Scott, Standifer, Van Zandt and Young—43.

Noes—Messrs. Armstrong of J., Bagby, Caldwell, Cazneau, Cuney, Forbes, Hicks, Hunter, Kinney, Navarro, Smyth, Tarrant, White, Wood and Wright—15.

So the amendment was adopted.

In section 10th, the amendment of the committee was adopted, and is as follows: strike out the word "and," after "four years," to the word "they," and insert "at the first meeting of the Legislature."

The amendment of the committee to the 14th section, after the word "President," insert *pro tem.*, was adopted.

Also, the 14th section, the amendment of the committee, to insert "two thirds," after the words "majority of," was adopted.

The amendment of the committee to the 16th section—strike out "excepting such parts as, in its judgment, may require secrecy:" adopted.

In 20th section, the amendment of the committee was adopted—to strike out all after the word "open"

The amendment of the committee to the 26th section—to strike out all enclosed in brackets, which is—"(the office of postmaster excepted,)" was adopted.

The additional section of the committee, to come in between the 28th and 29th sections, is as follows:

"No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of State," which was read.

Mr. *Mayfield* thought it entirely unnecessary, and useless, unless it should go further, and fix some test.

Mr *Forbes* said it seemed to him in direct conflict with the section which says that "no religious test shall ever be required."

Mr. *Love* said he never saw but one man who denied the existence of a God, and he could never be elected to any office. He had, however, seen many Christians who did not believe in future punishments; and it would not do to exclude them, because they have the very best opinion of God Almighty.

Mr. *Scott* said there were many denominations of Christians who did not believe in a future state of rewards and punishments: but that we receive them in this life. One of his neighbors, a very good man, who called himself a Universalist, held that doctrine: still he styled himself a Christian, and was as good a citizen, so far as his observation extended, as any other. If either part of the section is adopted, he thought the clause commencing with "or" should be stricken out.

The section was rejected.

The amendment of the committee to the 30th section, was then read as follows: in the 8th line, strike out "the number of qualified electors," and insert "the free population, Indians not taxed, Africans, and descendants of Africans, excepted."

Mr. *Moore* said: that may operate very unequally in many sections of the country. There is no basis so equal as that of qualified voters. If you adopt a basis of women and children, suppose large factories to be established in a particular section of the country, which may hence contain at one point, some three, four, or five thousand women and children, and perhaps not one-tenth of that number of qualified voters. Yet those manufacturing establishments may control the vote of that section. It may operate very injuriously upon many of our cities, particularly that which I represent.

Mr. *Brown* said: the question before us is the basis of representation: and adopting the argument that the tendency of the amendment is to diminish the weight of the qualified electors in particular sections of the country, I must oppose it. If any other basis is to be adopted, I think it ought to be taxation; if any thing is akin to the right of suffrage, it is that. But to declare on the face of the Constitution that every man with certain qualifications shall vote, and then, in fixing the basis of representation, to say that one person in a particular section of the country shall have the privilege of voting for several candidates, whilst another person in another section shall only vote for one, is an act of injustice, inequality, contradictory to the first section of the report, and one to which I cannot give my assent. Gentlemen have told you, that they are afraid to commit political power to the people of Galveston and other towns. If there are any fears of this class of persons, any danger from transitory persons, restrict them, and do it openly: and let the restriction operate all over the Republic: but do not fix the stigma of disqualification in particular instances. Five hundred electors in Galveston should have as much weight as five hundred in Montgomery or elsewhere.

If any thing can be allied to this subject, it is taxation. But we are not told here that three fifths of the slaves shall have their representation, we are not told that the taxable property of all the country shall be represented. Not at all. We are told that the women and children of the country are to be represented, to work political results, favorable to one part of the community, and injurious to the rest. Now, sir, a single man may have as large a stake in the community, he may pay a larger tax than many married men. In this country there is a large class of young men. They have submitted to taxation, have borne the burdens of government, and endured all the hardships and vicissitudes resulting from the political condition of the State. As a class, in virtue, valor and intelligence, they are exceeded by none; and there is none entitled to greater weight in the councils of the country. I would adopt any basis sooner than assent to this. No reason is assigned for it, but a wrong and unjust one, and there is no reason for it in the abstract. I hope, since it is urged, that the effect of the amendment will be to produce this inequality, that it will meet with the opposition of the House.

Mr. *Van Zandt* said: It is a fundamental principle that government is founded for the protection and benefit of the whole. Every individual, minor, male or female, has an equal interest in the prosperity of the country. It is impossible, however, in the control of a government that each individual should be qualified to participate. Hence though the right is derived from all, that of voting is vested in the male citizens who have reached twenty-one years of age; that of holding office, in those who have attained certain other ages; and so on. But it seems to me, that all individuals, male or female, old or young, have an interest in the welfare and prosperity of the country, by some means, through themselves or their protectors, they should exercise the rights which originally belonged to them.

I do not know, in practically carrying out this system, what portions of the country it may affect But I think it best to establish principles of government which shall be those of equality, and such as may carry out the original objects of the formation of society. If it should take away weight from one portion of the country, or give it to another portion, I am still willing to vote for it. I do not believe, however, that its effect will be so great as gentlemen anticipate. I am satisfied of the correctness of the remark made by the gentleman from Galveston. I have noticed a large proportion of children in that city. But there is one class which I think should not have the same weight with others I allude to that class which is floating throughout the country. Ours is a planting country. We shall have perhaps large plantations where you will find individuals who have no families, here, or who carry on their business by overseers. Now I do not believe that in apportioning representation, a single individual who has no permanent interest, neither house nor home, in the country, should have the same influence with another individual and his family who have made this their home and abiding place.

I am opposed to all property qualification for electors, and also to basing representation upon property. I believe that the free white population is the only proper basis.

Mr. *Moore* said: I consider this an important matter. It is one which may in time affect our servile institutions in such a manner as to jeopardize the safety of the State. It appears to be overlooked, that, as I before observed, towards the northern section of the country we have beautiful water-falls, upon which it is likely that large manufacturing establishments will spring up. Around these the slave population will not congregate. The population will consist chiefly of women and children. You may have another Lowell in the North; where a few qualified voters, perhaps some forty or fifty will represent several thousands of women and children. Their voice will be as potent as that of the largest planting county in the State. That population which will congregate there may endanger your servile institutions. I do not wish to protect them by a system of taxation: I consider that a violation of the principles of republicanism, and I believe that every attempt to do so by this means will fail of itself. I would protect them by the adoption of a pure republican basis; I will even say a Democratic basis. In a pure democracy the people come forward one and all and act in a great assembly. This is pure democracy: for every man throughout the State to come forward as they came forward in the old Grecian Republics, and all vote in concert. In a pure democracy all the people vote. This cannot be the case in a large extent of country. We must come as near it as we possibly can; and let portions of the people assemble to represent the whole. Women do not come: children do not come; but men, those over twenty-one years of age. Then if we wish to adopt a pure and truly republican basis of representation, let it rest upon the qualified voters; it is the only true basis, and resting upon this basis, the servile institutions and all the great institutions which are at the foundation of the prosperity of the country, will be secure.

Mr. *Lipscomb* said: I am not much in the habit, Mr. President, of intruding my opinions upon the committee: I am generally content with giving my votes according to the dictates of my best judgment. But the subject now before us is one upon which I have thought and reflected much. The moment in which I saw that we were to be admitted into the Union as one entire State, in expressing the joy and gratification inspired by that result, I could not but be alarmed at the same time, in reflecting upon the position in which we find ourselves. I felt satisfied that our vast territory, with its variety of soil and variety of climate, would have at no distant day an equal diversity of population. I did and do believe that above the latitude of 33 deg. 30 min., slave property will not be valuable, and whenever it is not valuable it will not be employed: it is a country where that species of labor can never be employed to advantage in the culture of cotton or sugar: a country which must be confined to grain growing and stock raising by the employment of white labor. And I believe that the vast country north of 33 deg. 30 min. will admit of a very dense population, a population that will control the destiny of all south of it, when acting together. I, too, am opposed to restricting the free exercise of suffrage: I wish as nearly as practicable to establish our government upon a free basis. But call it Democracy, Federalism, or what you please, I do say that with me self preservation is the first law of nature: and we should cast away the lights of experience, and the benefit of all prudent calculation, if we were not to take into consideration the situation we are now in, and that in which we may be a few years hence. Every man now upon this floor, is representing a county whose latitude and climate are adapted to a slave holding population. Not so with the country above 33 deg. 30 min. Now what has been the course pursued by the recent Convention in the State of Louisiana? There the democracy of the land had a great majority in the Convention That Convention was influenced so far by prudential considerations of this nature, that they have a provision fixing an arbitrary representation for the city of New Orleans. And why? Because they were instructed by the history of the past, that the slave population of that city was annualy diminishing, and the white population increasing; they saw that the city was fast losing all interest in protecting the owners of slaves; and for this reason they disregarded every taunt that might be thrown upon them for their departure from the principles of democracy, and imposed a restriction required by the exigencies of the case. In doing so, I believe they acted with prudence: and that if they had not done so, fifteen years would not have passed over, before slavery would have been abolished in the State of

Louisiana at the ballot-box. I am an old man, almost the oldest man in this House. I have not long to live; and if I had, I have not much property to protect. But I tell you, if you do not throw some protection around this species of property, if you do not guard it by some checks or balances in your Constitution, that fifteen years will not elapse before slavery will be abolished here in Texas, at the ballot box. Our beautiful country is so divided as to confine the slave population chiefly to one part of it, and the free white population to another. Mr. President: the abolitionists of the North are a shrewd people: they will see our situation, and they are not blind to it now.

With these views I am opposed to the amendment. The original section I know affords but little protection: it does perhaps some little, to the large slave holding districts. But I am not satisfied with it. I shall oppose the amendment, in the hope that henceforth some plan will be introduced which will effectually protect this kind of property. I am not in favor of looking to protection in the popular branch of the Legislature: I am opposed to any other basis there than that of qualified electors. But I wish to secure it in the Senate, without having as yet digested any particular scheme, or having any favorite plan to suggest. The Convention can consider the subject, and perhaps devise some scheme which will be acceptable to all.

Mr. *Henderson* said: If we had a third scheme, Mr. President, before the House, I might perhaps be induced to change my opinion upon this subject. But unless a more acceptable amendment is prescribed than that made in committee of the whole, I shall feel bound to support the plan then adopted. I cannot, sir, be alarmed by the imaginary dangers held out in terror over us. It seems to me a most ridiculous notion, that the abolitions of the North will be moved to come to Texas by their desire to abolish slavery; that they will leave their homes in the land in which they reside, and immigrate to a slave State situated in the extreme South-west, while the wide extent of the North-western country is open to them, where they can freely enjoy their ~~own~~ peculiar opinions, and where the institutions of the country are in accordance with their views. Would they come here if they have all the horror of our institutions which it is represented they have, for the purpose of living under our laws as they exist? Is it to be supposed that they would be so disinterested? I, for one, have never attributed to those people any such degree of disinterestedness. It seems to me this argument is not supported by reason. But we are told by other gentlemen that there is a number of persons in this country whom it is our duty to protect, and whose rights should be represented. Sir, are not our wives and children entitled to our protection? Have they no rights in this country? Have not the great mass of the population a claim upon us? Or are we sent here alone by the lords of the soil who control elections, and are we to administer wholly to their dispositions and wants? I think we have done sufficiently in protecting females from being represented by their own sex; I think we assume enough when we do that much; and that when we come to fix the basis of representation, we should have regard not only to the males over the age of twenty-one, but to the whole white population of the country. Is a widow, for example, entitled to no privileges, to no weight in the legislative counsels of your country? Look into many of the counties of this Republic, and you will find a numerous class of that kind. And could you say that you would have no regard to the situation of these women, whose husbands have been stricken down in battle, and their voice is still at the polls? It seems to me that you would be striking at the very basis upon which you are about to form your State Government. And I would ask my democratic friend from Harris, if a scheme like this is in accordance with the views he has expressed on former occasions? I would ask him whether these women and children whom he would disfranchise by the course which he proposes to take, have no rights? But we are told by some gentlemen that we should adopt an unjust rule in disregarding qualified electors, or in other words having regard to the whole free white population, in fixing the basis of representation; while in another breath they tell you that you should pay regard to property; that you should have a basis of population and wealth combined; or that you should adopt a combined basis of the slaves of our country and the free white population. I think it very unfair, other gentlemen think it very fair, that negroes, who have no political rights, should occupy precisely the same position with our wives and children. Now, if it is right that we should adopt the Federal basis of representation, and include and estimate the slave population, is it not more just that white females and children should be taken into consideration? We are obliged here, if we intend to do justice, to take into consideration in fixing the basis of representation upon the whole free white population of the country, including women and children: while on the other hand I feel no sort of obligation to take into consideration the property of any man, whether in slaves, land, or cattle. These views induce me to insist upon the amendment proposed or adopted in committee of the whole until a more equitable plan shall be clearly presented to my mind. Until then, I shall not feel at liberty to disregard any portion of the free white population of Texas.

Mr. *Caldwell* said: The discussion, Mr. President, appears to me to have widely deviated from the amendment under consideration. The question before us is, whether in fixing the basis of representation, regard shall be had to the free white population, or to the number of qualified voters. The gentleman from San Augustine objects to the basis of the male population of voters, and prefers that of the whole white population, because, as he says, the women and children of the country, our wives and our daughters and sisters should be represented upon this floor, and not property; and he would hence contend that no security should be given to that kind of property which is held by so uncertain a tenure, slave property. [Mr. Henderson explained; he said that he had not intended to intimate that he would not be disposed to afford any security in the power of this body to give to that species of property.] By the proposition before us, adequate protection, so far as I can understand it, is afforded to the wives and daughters of every inhabitant of Texas. It is true that every voter who goes to the polls has not a wife, nor perhaps a daughter. But I will venture the assertion, that there is scarce one of them who has not a mother or a sister. And in exercising the right of suffrage, and sending individuals to the Legislature, to enact laws for them, they will not hold them harmless, if they fail to give protection to those mothers and sisters. Therefore, as I understand it most clearly, women and children are already represented through the medium of the qualified electors of the Republic. The gentleman from San Augustine also thinks it strange that any one should suppose for a moment that the abolitionists of the North might possibly travel to the South for the purpose of revolutionizing our institutions. Sir, has the gentleman not forgotten that the statesmen of the North opposed the incorporation of Louisiana because it was encouraging slavery, giving the preponderance to the Southern portion of the Union over the North, and destroying the balance of power necessary to exercise control over Southern institutions? Has he not forgotten that in the acquisition of Florida, Texas was given up without any equivalent, purely for the purpose of weakening the South and destroying Southern institutions? Does he not think that the same individual who gave up Texas, and who is still active in life, and at the head of a powerful party, may raise up inducements to populate the whole Northern section of our coutry by a white population imbued with abolition principles? Are they themselves so ignorant as to believe that even if located among us they would be compelled to hold slaves? Can they not, sir, be secret among us in sufficient numbers to occupy the whole of the Northern portion of the country? Whether this plan of representation belong to democracy or whiggery, I care not, nor do I know. But if it is necessary to self-preservation, if it is required for the protection of our rights and our property, I am prepared to vote for it, whether a Whig or a Democratic scheme. I hold that party differences have nothing to do with the principle now before us for discussion. I do not think it at all improbable that the abolitionists will have our situation in view; and may oppose any division of our country, in order to throw in a population which will ultimately control the question of slavery at the ballot box. Such a thing is possible, and I believe even probable; but if there is only a possibility of such an event, I think it our bounden duty to adopt any measure which may have the slightest tendency to protect the rights and give security to the property of the present inhabitants of Texas. With these views, I shall vote for the provision as it now stands in the report, and against the amendment of the committee; and if any proposition shall be brought forward, in my view calculated to protect our rights against the efforts of the abolitionists, I shall certainly vote for it.

Mr. *Howard* said: I will go as far as any reasonable man can go, in my opinion, to protect slave property. But if we are to protect it, let us have some measure by which we will protect it. If gentlemen wish this protection in the shape of representation, there is but one way, the Federal basis. But it has nothing to do with the present question before us. It is perfectly immaterial. So far as the slave question is concerned, whether you say that qualified electors or that free population shall constitute the basis of representation. For is it not sufficiently evident, if it is the policy of any party in the U States to throw in here a population to demolish our institutions, that it is to be done by the qualified electors, and not by the rest of the population? Because the qualified electors alone can act upon the subject; not the widow or the minor, not property, but the qualified electors alone. Then let it be placed upon its true foundation, and not as a bugbear be brought in where it has no place. There are two principles upon which representation may rest, and but two, the one property, the other numbers. In my humble opinion, gentlemen who have argued against the amendment, strangely confound both principles. They do not seem to me to direct their arguments either against the one point or the other. They do not propose property, nor free population; but go entirely upon the assumption that the qualified electors are the only power in the country which ought or can properly be represented, because the qualified electors practically control it. I deny that the principle is sound or just; I maintain that each class of the population which helps to support the burthens of government, which helps to pay taxes, whether entitled to vote or not, is entitled to a voice in our political institutions, and to have its interest respected and represented, under any form of government we may choose to adopt. This strikes me as too plain to require much contrast or argument. Has not a female who owns a thousand slaves, or a hundred thousand acres of land, a right to some protection? Is it not fair and proper that her interest should be looked to? Are the interest and rights of the orphan, who pays a large amount of taxes, to be entirely overlooked in any fundamental law which we may adopt? And is a man of twenty one, not worth perhaps more than the coat upon his back, entitled to more protection and more voice in the country than one holding this large amount of property? I deny the justice of any such principle. I say that all the great interests of the country are, and ought to be, protected by every government which looks to human liberty and right. But there is another class of people, a large class, a property holding class, who support the burthens of government, and contribute to the wealth and prosperity of the country, who are entirely overlooked by this provision making qualified electors the only basis. We have here a large European population. It will take five years, under the laws of the United States, to make a European a qualified elector. In the mean time his property is subject to taxation; he is bound to fight the battles of the country; to serve in its armies; to work on its highways, and aid in defraying all the expenditures of the government. Now, sir, it has been said, and may probably be said again by some gentlemen, that they distrust this population; that it may, perchance, attack some of the institutions of the country. But how? By their property—by the taxes they pay to the government? No, sir, but by being qualified electors. If you wish to reach them, have the nerve to say that no foreignor shall be a qualified elector. Say what you mean, and do what you say, and then you will make yourself understood. But I say, that as a matter of justice, so long as you admit their immigration, tax them, and make them bear the burthens of government, they are entitled to have their interests guarded and protected. They ought not to be entirely overlooked before they acquire the rights of citizenship. I say that their property, the interests by which they are identified with the country, ought to be represented, ought to have a voice in the government and they can have that voice only by making free population the basis of representation. Gentlemen talk about democracy. Whose voice is louder upon this theme than that of the gentleman from Harris. I have been looking up to him as my leader. But I must repudiate him as my fugleman, if he takes a position so much at war not only with abstract justice, but with the positions assumed by his political friends in the U. States.

It is known to every thinking man that the march of population will be westward. The small farmers will locate there; the large planters will remain in the East and upon the coast; and the system of absenteeism will exist there. I will not say that feeling has had any influence, but if it has, it is unfair.

Finally, it does strike me that there has been a great deal of unmeaning declamation upon the subject of slavery. I will adopt any measure which gentlemen may propose, to secure that institution But its security lies beyond the puny and mad attacks of the abolitionists of the North; it lies in the nature of things. So long as slavery shall be more profitable than free labor, it will exist; and all attacks upon it abroad and at home will be impotent indeed If it shall ever perish, it will be undermined by the superior cheapness and advantages of free labor. Its security rests upon a pecuniary interest, and as long as that pecuniary interest finds a place in the country, so long slavery will remain a permanent institution. It can only be abolished by the slave holders themselves, and will never perish in any portion of the U States, in any other manner But if gentlemen wish to protect it by saying in the Constitution that it shall never be abolished, let them go that far; if they think it necessary to adopt the Federal basis, let them do that; but why insist upon this puny defence, based upon the difference between free white population and qualified electors, which gives no political power to the institution at all? It would be a dangerous doctrine to promulgate to the world, if there is any danger of foreign attacks, that the institution can be supported in no other way than by an unjust and unequal provision in our fundamental law. I look upon it as too safe to require any such impotent defences.

For these reasons, I go for free population instead of qualified electors, as the basis of representation.

Mr. *Armstrong*, of Jefferson, said: Before giving my vote, Mr. President, I feel compelled to make a few additional remarks. It is contended that qualified electors are not a proper basis of representation. If they are not, then they are not, properly electors; and if the inhabitants are the proper basis, the inhabitants are the electors. If they are entitled to reprsesentation by voting by proxy, they are entitled to vote at the ballot box themselves. Then if gentlemen wish to have the free white population all at the ballot box, they must do away with the system of laws now in force in England, the U. States and Texas. Society has for a thousand years ascertained and defined the rights of women and children. But if history be defective, and society has been derelict in properly ascertaining these rights; if the basis of representation is the women and children, and these are not allowed to vote by the present laws, they should now be allowed to come forward to the polls and vote in person. If all power is in the people, and if you understand by the people women, children and men, then I say they have the right to be represented by women and children, and this cannot be the case unless the means is afforded them of choosing their own representatives. Whenever we wish to change the Constitution, men, women and children must all have a hand in changing it. Gentlemen, I think, have mistaken their situation; they seem to have imagined themselves in a state of nature: they have forgotten the existence of such things as civil liberty and civil government. The gentleman from Harrison says that women and children are entitled to protection.— Now what protection do they want but that which is afforded by their natural protectors, and by the laws? While they are minors, are they not under the protection of the law and their guardians? What greater protection than that of a parent or guardian? Can we say that there have been no laws passed for their benefit heretofore, because they have never heretofore been heard in the halls of legislation, either by themselves or delegates selected from among themselves?

I say if widows and negroes have the right to vote, let it be so represented. If women and children have the right to have a hand in making the laws, give them an opportunity of voting for their representatives and delegates.

But as I perceive the hour is late, I will detain the Convention no longer.

On motion of Mr. Anderson,
The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Thursday, July 24th, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.
Prayer by the Chaplain.
After some business relating to the mails,
The committee on Privileges and Elections made the following report:

Committee Room,
July 24th, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

Your committee, to whom was referred the memorial of a portion of the citizens of Montgomery county, praying that Charles B Stewart be permitted to take a seat in this Convention, as deputy from said county, have had the same under consideration, and directed me to make the following report:

From the evidence before the committee, they are of opinion Charles B. Stewart is not entitled to a seat in this Convention; they, therefore, recommend the passage of the following resolution:

Resolved, That Charles B. Stewart is not entitled to a seat in this Convention, as deputy from the county of Montgomery.

J. B. MILLER,
Chairman.

Mr. Scott offered the following substitute:

Whereas, the county of Montgomery is entitled to four delegates or deputies, in this Convention, by the basis of representation fixed in the President's proclamation, and sanctioned by this body; and

Whereas, it appears to this Convention, that the electors of said county voted for, and elected Gen. Sam. Houston, as one of said deputies, under the erroneous belief that said Houston was a candidate for their suffrages, and would be present in this body, to represent their interests and wishes; and

Whereas, it further appears to the satisfaction of this Convention, that said Houston will not attend this body, and represent said county during its deliberations; and

Whereas, it is impracticable to refer the election of another deputy to the voters of said county, and have the place of said Houston supplied in time to effect any beneficial result: therefore,

Resolved, That the seat of Gen. Sam. Houston, a deputy elect from the county of Montgomery, be and the same is hereby declared vacant, and that the remaining deputies for said county be and they are hereby, authorized to fill said vacancy, by choosing another or fourth deputy to occupy said seat.

On motion of Mr. Scott, Mr. Stewart was authorized to address the Convention personally or by counsel.

Mr. *Love* moved to amend the substitute offered by Mr. Scott, by striking out all after the word "vacant," and inserting "and that Charles B. Stewart be entitled to the seat as the fifth highest candidate."

His reasons were, that the documents here show that Mr. Stewart brings with him a greater number of votes than any other individual who could claim a seat under the late election: that Montgomery county was entitled to full representation: that General Houston, in all probability, would not appear; and that the county of Montgomery would be injured to the extent of the failure of one vote in carrying out their views and wishes. And he thought, as had been remarked, that this matter was not controlled by law, but was entirely addressed, to the equity of the Convention.

Mr. *Brown* hoped the amendment would not be made. He was disposed that Montgomery county should have the proper representation, but would rather the three gentlemen here as delegates from that county should take the responsibility of the selection, than to assume any part of it himself. He did not know whom the people of Montgomery county might desire to represent them, nor what might be their views and interests. He would prefer that these three gentlemen who have to go back there to their constituents, and who will be held to a rigid accountability for their choice, should have the power of making it. It was evident to his mind, that Montgomery was entitled to four delegates in this body. It was evident that, in consequence of a mistake which had prevailed over that county, a person had been elected who could not and would not serve; and he was not disposed to visit the consequences of this accident upon that people. He was not willing to refer the election to them, for the effect would be to deprive them of representation until the close of the session. It was very plain from the petition itself, that Dr. Stewart was not elected by Montgomery county: and he was not willing to vote that he was, nor to elect him for Montgomery county. The responsibility of the election should be cast upon those who represent the county in the Convention.

Barry Gillespie, Esq., then addressed the Convention as counsel for Mr. Stewart.

Mr. *Armstrong* said, that if upon equitable grounds, the delegates from that county would assume the reaponsibility of choosing this gentleman as the fourth Delegate, he was content. But it seems that the people of Montgomery have manifested most unequivocally their wish that Gen. Sam Houston should be their delegate: and if they wished the name of Sam. Houston placed upon the wall to represent them in fancy alone, we have no right to call the matter in question. He was not satisfied but they would rather prefer to have the name of Sam. Houston only in sound than to have any one else in person. We are bound to infer it from their electing him under all the circumstances and contingencies. If Sam Houston has treated them with contempt, they must endure it and it belongs to them to call him to account for it. No person has a right to say his seat shall be filled but those who elected him; we have no business upon the petition of a minority to place any other individual there, and oust the name of Sam. Houston. Suppose Mr. Lewis were to withdraw from this House: there are four or five yet behind who were candidates; and upon the same principle the one who only received one hundred and odd votes could come in, the next in his turn, and so on, and claim the seat. He was not opposed to the gentleman taking his seat, by referring the matter to the delegates, but did not wish it to go to the House.

Mr. *Lewis* said: The proposition contained in the substitute for the resolution places me in a peculiarly delicate position. That substitute was drawn up and submitted to the Convention without any reference to my wishes on the subject Not having been consulted, I was very much in hopes indeed that I should be permitted to stand a silent spectator of the action of this House in relation to the matter. But as this resolution proposes to confer upon the delegates of the county of Montgomery the power to choose a fourth delegate, and as I am one of them, and one who has not solicited the responsibility, I think it due to myself, to those whom I represent upon this floor, and due to this Convention to submit my views upon the subject. I trust, sir, that I never may under any circumstances, be called to a position in life in which I shall not faithfully and promptly, and without regard to consequences, conscientiously di[illegible] devolve upon me; and [illegible] it is proposed to impose upon me a responsibility which I am not willing to take, nor do I think the people whom I represent desire it, I deem it due to myself to explain my views, and will endeavor briefly to do so. And permit me to assure gentlemen of this Convention that I feel as much solicitude to have a full representation from Montgomery county as either of my coadjutors: indeed I feel the greatest anxiety that it should be fully represented here; and I wish it could be by the distinguished citizen chosen to fill this place. This, however, may not be the case; and yet, sir, it may be for a part of the session. But, sir, I had come to the conclusion to give a silent vote upon the subject, and in support of the resolution introduced by the committee. I do not think that standing here as a representative of the people in this Convention, I should depart from a rule established by this House. that I should depart from the path of rectitude, in support of any gentleman's application, simply because he is from the county of Montgomery. No, sir, I am governed in my conduct by higher principles; I am not influenced by personal considerations; but shall place the matter on different grounds altogether. I, sir, voted for the resolution which ratified the act of the President in calling this Convention, and the mode and manner designated. I voted for it in the Congress of the Republic, thus giving sanction to the act of the President. The proclamation presents the manner in which elections shall be held, and that prescription has been ratified by the solemn act of this body. Montgomery county was allowed four deputies, to be elected in a particular manner. Being then chosen by the people, they come here with authentic proof that they were the choice of the people. Now without travelling further, I would ask if there is any proof in this case to that effect? Is there a particle of proof here before this Convention that will convince you, sir, that Dr. Stewart has been elected by the people according to the prescriptions of the law? No, sir: there is no such proof. On the contrary, there is decisive proof that he was not elected. This Convention having ratified the act of the President, having given it all the character and sanction of the law of the land, having adopted that particular mode of constituting delegates to this body, it is wholly incompetent for this Convention now to rescind that act and adopt a different mode of election. This action would be of a retrospective character, and have an effect coextensive with the limits of the country. Such has not been the disposition evinced on former occasions by the Convention, which has closed the door against every one who has not come here in due form of law. I will appeal to you, sir, if this application is made in accordance with the principles of the proclamation? On what ground then does this gentleman claim his seat? By petition. I regret exceedingly that the Chief Justice of that county has taken upon himself to issue two certificates for gentlemen who he says are elected in that county. By reference to the returns made by him to the State Department, it will be seen that General Houston and three others were duly elected delegates from that county, General Houston heading the list. He then proceeds to issue certificates to those delegates. holding in readiness that of General Houston. I am satisfied that it was the desire of General Houston that he should be run in Montgomery county. Judge Norton remarked in conversation with me that the people of that county would be angry with him if he should not return in time to take his seat. I told him that he had written a letter on the faith of which, and the representations contained in it, General Houston's friends have run him, that he was elected, and there was no certainty of his being back in time. He assured me that he did not do it without first consulting General Houston; that he was desirous of being elected from Montgomery county; if run at all, as that was his residence: that he (Judge Norton.) sat down and wrote the letter with General Houston's approbation, and sent it to Montgomery county. Then, sir, he was engaged as a candidate, though at the time I thought it indiscreet, and hazarding some thing for his friends to elect him. Yet the people were desirous to have him in the Convention and gave him a large vote; and as I understood, they have not yet despaired of his return, or perhaps they would have taken the necessary steps to have had an election.

It is insisted that General Houston is not a delegate from Montgomery county, because not a citizen of the county. Now, sir, I understand that he regards himself as a citizen of that county. He lives there: he has made an improvement there, and certainly looks upon it as his residence. But admitting the fact for the sake of argument, let us refer to the example set by the State of Virginia in electing Delegates to the Convention. Did she confine herself to the citizens of any particular county? No. sir: she selected them from all the counties of the State, where the most talented, intelligent and virtuous were to be found. And is there a gentleman here who would have denied General Houston his seat, had he presented himself before this body? Not one, sir.

I find among the names appended to these documents, those of some of my personal friends, but I am compelled to be governed here by other and higher motives than mere personal considerations. Have a majority of the people of that county numbering some eleven or twelve hundred voters petitioned in this case? No, sir.

Thus much I have deemed it my duty to say on this occasion; I regret, sir, that it has devolved upon me to say one word.

Mr. *Scott* said: I had not intended to participate, Mr. President, nor shall I do so, in the debate upon this subject. I rise merely for the purpose of justifying myself in the eyes of the House, if not of my colleagues, for the course I have pursued upon this occasion. It is true, I did not submit the resolution offered as a substitute to the inspection of my colleagues: I do not recollect whether or not to that of the other. Be that as it may, I presume we respectively retain our liberties as delegates from the same county in this convention. Here let me say to my colleagues, through you, Mr. President, that I did not intend to depreciate their importance, or the weight to which their opinions and wishes are entitled. What I did, was done from my own sense of right and wrong, and upon my own responsibility. The terms of the substitute authorizing the remaining deputies to select one: and if my worthy colleague then shall not see proper to sanction this proceeding for the consideration alluded to (and the other delegate also was not consulted,) he is not compelled to do so The responsibility of introducing this resolution is mine, and mine alone. Let me say, however, that if there is any thing wrong in it, it was not intended, and I hope they will excuse me

As to the application of C. B. Stewart for a seat in this body, perhaps it would be somewhat indelicate for me to say any thing: as, although I have been a resident in the county for some five or six years, yet I have led so secluded a life, that I am a stranger in the county compared with my colleagues, and much less acquainted with the state of things there. And if I get decently out of this position, I think it will be some time before I shall again propose myself to fill a similar station: for I feel my inability adequately to represent those who sent me here. I think it probable that I, as well as General Houston have deceived them, in our respective competency to represent the great and important county of Montgomery upon this floor. General Houston was elected by an overwhelming majority, and circumstances go to show that had he been there, scarce fifty would have voted against him. I do not know, however, whether they would like his shadow pasted upon the wall or over his seat better than ony other representation here present: but this I do know, that they would prefer him to any other citizen there, if they thought he could come here and represent them. Whether he was eligible or not on this occasion is a point of law which I do not argue. I believe the evidence on the clerk's table shows that the people of Montgomery county voted for him, when thought, erroneously as it appears now, that he would be here. It will be seen from the letter of Judge Norton, that he was consulted as to the propriety of running for the county of Harris. He then said that he would prefer Montgomery. It may be and probably is the fact, that he was somewhat solicitous upon the subject at the time. I contend that the people did not have the whole of the facts before them, when they supported him. Some of his warmest friends thought from the evidence before them, that he could not and would not be here to represent them. I, myself, though a candidate at the time, when I did speak on the subject, said that I thought there was some doubt about the matter: for my own part, I had great doubts upon the subject, although sensible to the last, I said very little. I contend then that the people then were deceived in the origin of this matter, and the facts now developed and before the House to day, show that General Houston could not reasonably have expected at the start to be here. Then if it is due the county of Montgomery to be fully represented, what is the proper mode? I for one would vastly prefer sending this matter back to the people of that county: but the Chief Justice could not declare the seat vacant; and the President could not issue a new writ. It would be entirely useless to refer it back to the people. It is 130 miles to the edge of the county, and it would not be possible for the election to be held in time for the member to reach here much if at all before the end of the session. Then if the right of the county of Montgomery to a full representation is allowed, and the method proposed is not the best, what other shall we adopt? If this mode is not thought sensible, I then hope the amendment of the gentleman from Galveston will prevail, and that the Convention will declare Charles B Stewart entitled to the seat. It is shown by the returns that Dr. Stewart was but 60 votes behind one of the deputies, but 30 behind another, and 75 before another. This affords sufficient evidence that if not more popular than General Houston, at least the people of Montgomery county have great confidence in him. As regards the comparatively small number of memorialists, I do not think it proves any thing. It will be recollected that the county is a large one, perhaps large enough for three if not more; the people live dispersed without much communication; the time was the busy season of the year; no very great trouble was taken to obtain signatures;, and there appears to have been no concert of action: some petitioning the Chief Justice for an unconditional certificate, and others addressing the Convention. If referred back to the people, there can be very little doubt, that Dr. Stewart would obtain as many votes, or more than before. I do not think my opinion, however, entitled to as much regard as my colleagues; for, as I said before, I am comparatively a stranger in the county. But I think the conclusion legitimate, and that the Convention will sustain me in it. I do not wish to throw any responsibility upon my colleagues. It is very easy for them to decline acting in this matter. Let them if they please, leave the seat vacant, and answer to their constituents, as I will answer to them for the introduction of this resolution. I am not governed by personal motives towards Dr Stewart: I have no particular partiality for him, nor have I any enmity against him. I do not wish to curry favor with any man, or set of men. My only object is to carry out the wishes and maintain the interests of Montgomery county. If my colleagues choose to decline or to elect some other person than Dr Stewart, they are at liberty to do so. They are not compelled to elect him. A courier can go to Montgomery in four days, and in four days more the man they may choose to elect. can be here. In conclusion, let me say that I hope the substitute of the gentleman from Galveston will be adopted, and that the Convention, from the evidence before them, will declare Dr. Stewart entitled to occupy the seat. He has pledged himself, as I learn from his counsel, that he will vacate his seat immediately upon the arrival of General Houston.

The question was then taken on Mr. Love's amendment, and rejected.

On motion of Mr. Ochiltree, a division of the question was had, on the substitute of Mr. Scott.

The first clause of the resolution. declaring the seat of Sam Houston, a deputy elect from the county of Montgomery vacant was rejected.

The second clause, authorizing the deputies from the said county, to fill said vacancy by choosing another, was also rejected.

The question was then taken on the adoption of the report and resolution of the committee, declaring that Charles B Stewart is not entitled to a seat in the Convention as a delegate from Montgomery, and carried.

On motion, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P M.

The Convention met pursuant to adjournment.

On motion of Mr. Davis, the Convention took up the

ORDERS OF THE DAY.

The amendment of the committee to the 30th section of the report of the committe on the Legislative Department being first in order.

Mr. *Runnels* said: I had not intended, Mr. President, after the few remarks which I made in committee of the whole upon this subject, to have trespassed again upon the time of the Convention. But since the debate has taken such a wide range, and brought in every thing under the sun, it seems to be rendered necessary that I should give some further explanation of my views with regard to it. This proposition, to my mind, is a very simple one. It is one which materially affects the right of suffrage enjoyed by every free man of this country, and the weight and influence that his vote shall have in the legislation of his country. The report of the committee contemplates basing representation upon the qualified electors of the country: which would give to every individual voter in the community an equal right, attaching all the consequences to his vote that is given to any other voter in the community. The amendment proposed, sir, contemplates a different view of things. It strikes directly at the elective franchise. It gives an individual in one portion of the country at least five times the influence in the legislation of the country with an individual in another portion of the country. Let me illustrate for a moment the practical effect of this amendment upon this community as it exists. I am aware, sir, that in counties or states, where there are no geographical distinctions, where all portions of the country are settled by the same description of population, there could be no great disparity of rights, and no material difference between the principle of the amendment and that recommended in the report of the committee on the Legislative Department. But in a country peculiarly situated as this is, it does make a very material difference. I will suppose a case. I will take my own county, although there are many others similarly situated, and which must be so situated in all time to come; and that county, as I am bound to admit is not reputed as wealthy as the more northern portions of the Republic. The rich lands of that county, as well as Matagorda and Fort Bend, and all the lower Brazos, Colorado and Trinity country, will admit of settlements, plantations for cultivating sugar if you please, or extensive cotton farms. In this region of country there will not be as many free white families as in other portions of the State; for the reason that it is not as healthy, and families will not reside there to the same extent. And the great mass of the slave population must and will be concentrated there, for if these lands are brought into cultivation, it must be done by slave labor. Suppose the county of Brazoria to have four hundred voters. These are mostly young men engaged in managing and carrying on the business of those extensive plantations. Not that I wish it understood that I am one of these extensive planters; it is as much as I can do to live. But I am looking forward to a state of things which sooner or later must exist. There are then four hundred voters in the county of Brazoria, who have no families. By a preceding section of the report they are to be entitled to a vote. But, sir, by this amendment do you give that four hundred an equal weight in your Legislature with the same number elsewhere? No, sir: a county which has the same number of voters, but has four hundred families connected with them, in all numbering two thousand inhabitants, will have at least five times the weight and influence in the Legislature that is given to the first four hundred. Is this equitable; is it just? Some here contend that it is; I insist that it is not. But we have been told that we ought to make free population the basis of representation: because women and children are not otherwise represented Sir, I would like to know who there is or can be in Texas, that has not a mother, sister, or some female connection? I should like to know if there is any gentleman in this Convention who would pretend to say for a moment that widows and minors could be neglected under a system adopted not only by this government, but by all the American Constitutions, which constitutes free white male persons over the age of twenty-one, the governors of the country? What, sir, is meant by the principles of democracy, so often referred to in this Convention? Is it that the qualified electors in the community shall assemble in person, and settle all questions? Or is it a constitutional representative democracy, by means of which the people will and can do, through their representatives in the Legislature, what they cannot otherwise do in a country of so vast an extent? Upon the principles which are styled the true original primitive principles of democracy, all the people would assemble together for the purpose of deciding all questions; and we should find one individual leading up a wife and five or six children, claiming to vote for each of them. Does it not seem a strange idea, when the principle is a settled one that none but adults shall vote, to give to the individuals and communities having the largest number of wifes and children a right to so many extra votes? It is unreasonable and unjust, and prostrates every thing like the principles of liberty with regard to representation. It might perhaps be just, if every portion of the community were settled alike. But the very condition and position of the country forbid the idea

It has been said in debate, however, that the country was destined to have a considerable influx of foreign population, that under the laws of the United States they would be required to undergo the process of naturalization; and, consequently, they should have representation in the Legislature; this is to me the most astonishing doctrine, that a population, not citizens, should give to the county in which they may be located additional representation; when other portions of the country having a large population of another description, on which they pay heavy tax are to be excluded from representation in the legislation of the country. I intend no invidious comparison. I entertain, for that description of emigration the highest respect, and would extend to them all the protection of good and salutary laws, protecting them in all their rights, and when they shall have acquired citizenship under the Constitution of the United States; over which this State can exercise no control; it is my desire that they should exercise all the rights of other citizens, and entertain no doubt that we shall find among that interesting class, the truest and best patriots.

In conclusion, the doctrine contained in the amendment is to my mind flagrant and unjust. I impugn the motives of no one in this Convention, and I hope I never shall; I respect all the members of this body, and respect their opinions; but I must reserve to myself the right of speaking and acting for myself.

Mr. *Anderson* said: Mr. President, I feel but little disposed to intrude any remarks that I may have to make at this time, upon the exhausted patience of this body. But I feel confident that the importance of the subject will plead my apology, if any were necessary. I am not possessed of the oratory of embellishing argument, as other gentlemen, with the flights of fancy and the beauties of rhetoric. It is not my aim; utility and truth I aim at; let me but triumph over error, and I will cheerfully yield to him the meed of praise, who is justly entitled to it, by superior talent and gifted oratory. The flights of genius may for a while delight, but it is only unimpassioned reason that is useful in discussion.

Mr. President, I cannot concur with the amendment proposed by the committee of the whole. I am decidedly in favor of the section as it now stands reported by the standing committee on the legislative department. I can but briefly notice the position assumed by gentlemen adverse to the sent[illegible] [illegible] [illegible] [illegible] The [illegible] [illegible] [illegible] from Harrison [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] place he has [illegible] [illegible] [illegible] [illegible] [illegible] it is in opposition [illegible] [illegible] [illegible] [illegible] the Bill of Rights which declares, [illegible] all free [illegible] [illegible] [illegible] [illegible] [illegible] have equal rights [illegible] [illegible] [illegible] Bill of Rights is intended to prot[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] legal decision [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of any great and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] and the meaning of which [illegible] [illegible] [illegible] [illegible] [illegible] consequently cannot apply to the present subject [illegible] [illegible] this is of [illegible] general kind. In the application of [illegible] [illegible] [illegible] [illegible] [illegible] it could not favor the gentleman, for [illegible] [illegible] [illegible] [illegible] [illegible] and admitting it to be correct, I [illegible] [illegible] [illegible] [illegible] [illegible] its support. For instance, he proposes to fix the basis of representation [illegible] [illegible] white population. Well, let us fix it there, [illegible] [illegible] [illegible] [illegible]. To illustrate its operation, we will state a [illegible] [illegible] county in the East, from whence the gentleman comes, [illegible] [illegible] [illegible] [illegible] possessing four hundred voters; a county in the [illegible] [illegible] [illegible] I have the honor to come, has [illegible] [illegible] [illegible] [illegible] [illegible] voters; and, in the course of our progress, ([illegible] [illegible] [illegible] in a state of war,) if it should be [illegible] [illegible] [illegible] [illegible] [illegible] of the country. his county furnishes as many [illegible] [illegible], to [illegible] [illegible] and defend the institutions of the State [illegible] [illegible] [illegible] would be equal, and thus far also his principle would justly [illegible] [illegible] [illegible] [illegible] is restored, and the great and essential [illegible] [illegible] [illegible] [illegible] political action, how does it then rest? The gentleman's [illegible] would send two representatives to my one, when I had contributed [illegible] in the protection and defence of the country as much as he. [illegible] [illegible] equally? Does it operate consistently with republican principles? In the one case, we are called upon to contribute equally [illegible] the defence of the country. We encounter all the dangers, [illegible] [illegible] [illegible] incident to a state of war as well as in the civil [illegible] of the government. In the other, we are denied the rights [illegible] [illegible] equally with the rest; or, in other words, when we are [illegible] [illegible] [illegible] the violation of our dearest rights, they call upon us and [illegible] [illegible] compelled to go; but when they are secured [illegible] [illegible] [illegible] [illegible] [illegible] told, with great gravity, that inasmuch as it would be [illegible] [illegible] [illegible] to have your influence in legislation, no matter how just it [illegible] [illegible], yet you shall be denied this great and essential privilege, representation, equal to the support you have rendered.

Sir, such a doctrine as this is at variance with the organic principle of our institutions, repugnant to common reason and justice, and I hope will receive its merited rebuke. We are assembled here, Mr. President, for the purpose of [illegible] [illegible] Constitution, which is to be equal in its operation for general [illegible] [illegible] special purposes. But it does seem to me that if we concur with the amendments adopted by the committee of the whole, we strike a deadly blow at equal privileges, derogatory at once to free principles, and subversive of political rights. I have placed this question, then, stripped of its unnatural attire upon natural rights combined with political expedience, and ask gentlemen to meet me fairly upon the position I assume. The gentleman from San Augustine, Mr. Henderson, argues against the electoral vote, and bases the gist of his remarks upon a violation of female rights, he asserts, and supposes a case. Suppose, said he, a female, widow of large possessions, (and who must from that fact contribute largely towards the support of the government.) he denied the rights of representation upon number; here you present an unequal right. Mr. President I think not: for if she possesses the property, the gentleman supposes she has all the other qualities requisite, not only in a short time to be represented in legislation, but actually represented with a helpmate qualified to fill all her wants, political included. I see the gentleman smile; I will therefore attempt to change him into seriousness by an answer to his argument. I started out by saying in proportion to the individual services claimed, should also the individual claim the right of representation, in order to prevent the increase of burthens disproportioned to his rights. Now I ask when were the females of our country ever called upon to confront with their placid smiles the austere look which war induces, when have they ever shouldered their weapons in defence of their country? Until he can show a case, his reasons for his position desert him. On the contrary, they have served as a pretext for many a man to shrink from responsibility in the defence of his country. But still I do not concede that they are not represented, but hold that they have full representation in proportion to the means contributed. Why talk about their great rights, and still deny them the greatest rights, which is that of becoming representatives themselves? To run further after the gentleman's argument would be to pursue a phantom, or attempt to reach the end of the rainbow, in expectation of finding a substance. And, women are a good deal like rainbows, very handsome, delicate, and not very tangible. Mr. President; I shall not press this silly nonsense further against the assertions of gentlemen who have brought so little argument to render their position palatable to the minds of members.

Sir, the abolition doctrine has found its way into the very merits of this question. It may have an important bearing. I do not pretend to deny it; enough has been said upon it, and I am not called upon to offer any more in addition. I appeal though to every member present, in behalf of individual rights, and public justice, and general utility, to reflect deeply upon this important subject, so that local interest may not weigh down the general good. I ask them not to exercise a physical force, but the strong power of moral influence, individual rectitude and political justice, and believing that the result of this question will be an illustrious commentary upon the wisdom which characterizes deliberative assemblies, I submit its decision with a full confidence in its just issue.

Mr. *Moore* said. The gentleman from Bexar observed that we had started up a bugbear; that we distrusted foreigners, that we were afraid of European emigration. Sir, I do not fear it. I will say to that gentleman that I shall rejoice to see any portion of the Caucasian race come here and enjoy the blessings of our institutions; I shall welcome the Norwegian and the Spaniard alike, let them come from the far North, to the pillars of Hercules, they are all welcome, if they come to aid us in maintaining our rights and liberties, if they will fight for the standard of freedom, they should enjoy with us all the privileges of Texians. It is not these I fear. No, sir, strike out the term "white," and what will be the result? Hordes of Mexican Indians may come in here from the West, and may be more formidable than the enemy you have vanquished. Silently they will come moving in; they will come back in thousands to Bexar, in thousands to Goliad, perhaps to Nacogdoches, and what will be the consequence? Ten, twenty, thirty, forty, fifty thousand may come in here, and vanquish you at the ballot box, though you are invincible in arms. This is no idle dream; no bugbear; it is the truth. We have received recent information from the West, that large numbers are now on their way to Texas, intending soon to settle at Bexar. I fear not the Castillian race, but I fear those who, though they speak the Spanish language, are but the descendants of that degraded and despicable race which Cortez conquered. They, if we adopt the amendment, will have a representation equal to that of the Anglo-Saxon or European races.

That honorable gentleman observed that he had regarded me as his fugleman, so far as democracy was concerned. It is true that I used the term democracy, but not in a partizan sense. I stated that the only pure republican or democratic basis was that of qualified electors. Under a democracy, women and children do not come in and vote. Go to the Indian tribes; do the squaws and children participate in their councils? Go to any country you choose; to that which is in the highest state of civilization; do the women and children come to its assemblies representing themselves? No, sir, it is the lord of creation himself, in his pride, and strength, and dignity, who comes there to legislate for the inferior portion of his race, for the weak and the feeble of his country. You are called here to lay the foundations of a government which will last perhaps through all time. Let its foundations be firm; firm as the rock upon which this city rests; build them in adamant, that they may defy the waves of time. You represent a high and noble race, the Anglo-Saxon or American race.

> "Pride in their port, defiance in their eye,
> I see the lords of human kind pass by."

Bugbears frighten them not. But while I would lay firm the foundations of our government, I would fix them upon such a basis as intelligent freemen would respect and seek to perpetuate. Talk not to me of a democracy which brings the mean, grovelling, yellow race of Mexico, I say the Indian race of Mexicans, upon an equality of rights and privileges with the free born races of Europe. The God of nature has made them inferior; he has made the African and the red man inferior to the white. Let them if they wish, like the Choctaws and Cherokees [illegible] government; but not come here to poison the institutions of the Caucasian race.

Mr. *Darnell* offered the following as an amendment to the amendment of the Committee [illegible] "Provided, that [illegible] shall not be included in the numerical strength until they shall have become citizens according to the laws of the U. States." In support of which he addressed the Convention as follows:

Mr. President: If I understand the ground taken in opposition to the amendment, it is this and no other, that the people of Texas may be imposed upon by foreigners who may come in and participate in our counsels without having acquired citizenship under the laws of the United States. If that be the only objection, it will become at once of no force upon the adoption of the amendment proposed by myself. It is argued, sir, by some gentlemen, that one portion of the community, the fair sex, should [illegible], or at least that our ladies should be placed on a level with the Mexican fair sex, who are not known, and should not be [illegible] portion of the slave population. What will be the effect of the proposition before the House? It amounts to this, [illegible] population in comparison with those of the white [illegible] have to vote in the counsels of the country. If that is a [illegible], I should like to see it more fairly demonstrated than it has yet been done upon this floor. It was said by one of the gentlemen [illegible] the country was invaded, and war declared, that [illegible] these farms would be the first to be called [illegible] of the citizens; and that if we adopted the [illegible] as a basis, they would be deprived of a right [illegible] to defend the country when others were exempted. Now, sir, who defend the country? Those who cultivate [illegible] prominent position? Or is it the bone and sinew [illegible] at all times to take up arms when called upon? [illegible] always ready to defend their country? [illegible] who live in the counties filled up with a white population [illegible] are not called out, sir. The class of young men [illegible] one years of age, though forced to [illegible] the country is not represented at all. I, for one, sir, [illegible] an equality with the white population [illegible]. I recognize no distinction between the different portions [illegible]. I contend that the white population is that which should be regarded in the counsels of legislation.

With regard to the remarks made about the abolitionists, to the fears expressed that they may get power into their hand here, if the principle is adopted, that population shall govern, they seem to me vain, idle and groundless. If the gentlemen are sincere, there is one position which they may take; to exclude all persons emigrating from a country where abolition principles prevail. You must declare that voters shall not come here from those countries, otherwise the object cannot be attained. Is there a proposition to that effect before this body? No, sir; nothing of the kind. But, sir, I have no such apprehensions. I believe this subject is one which should not be agitated here; such arguments as these should not be published to the world; they cannot result in good. I cannot see the force of any of the arguments adduced in favor of excluding population and making voters the basis of representation; I believe there cannot be any weight in them. If I could believe that a portion of the white population would attempt to infringe the rights of others, I might go with the gentleman; but I cannot believe it, and hence I cannot conscientiously vote for the other proposition. As regards the amendment, I propose that no foreigner shall be included in the enumeration until he shall have lived in the country five years, or the time necessary to acquire citizenship under the government of the United States. This will obviate the objections of gentlemen, without excluding any who have the right to vote.

Mr. *Howard* said; I think, Mr. President, that this amendment would leave the matter where the Committee placed it. Without noticing the observations of the gentleman from Harris, who may rest assured I shall never attack him, I only wish to place my views upon this question in their true light, and free them from a little unintentional misrepresentation. I wish to show that the position which I occupy was that of the fathers of the American Revolution and American government. It seems unpopular now to talk of "taxation and representation," but the time has been when that question was a pillar of strength and the battle cry that led to victory. Its history does not begin there; it was this question with which the advocates of liberty resisted the tyranny and oppression of the Tudors and Stewarts; and from that, the great principle was established in the parliament of England that the consent of the people through their representations in the lower house should be necessary to any measure intended to draw money from them by means of taxation. "Taxation and representation" is then a principle of the American Union: it was a principle which governed the men who framed the Constitution of the American Union; and there were men there as wise as any in any age, certainly as wise as any in the American Union at this moment.

It becomes necessary here to draw a distinction or two, before I proceed. As I conceive, there is a most material difference between the right of suffrage and representation. Representation is the end, the right of suffrage the means. Representative government is the great principle of the union and all the state governments. That representation is to be effected by means of the right of suffrage is another principle. A distinction has been spoken of between natural and civil rights. It has been said that the right of suffrage is exclusively a civil right. Sir, I do not understand how, in human affairs, we can separate natural and civil rights, and draw a distinction between them. In all things there is a right and a wrong, and in all things natural justice. We cannot say that this is a mere matter of political expediency; for, if so, it is perfectly immaterial whether one tenth of the freemen in the community vote, or all vote. I deny, sir, that you can deprive the great majority of the community of their votes, without infringing upon the principles of natural justice. The right of representation, however, is a natural, as well as a civil right What is it; upon what does it rest? All free governments rest upon the assent of the governed. It is from that we say the people can make and unmake the government at pleasure; from that we say that all political power emanates from the people; because of the presumed consent without which it is the republican principle that no government is binding upon the people. It is a natural right existing in the very nature of things; in the very definition of all forms of republican institutions. The two rights are entirely distinct.

The position which I took was this: that representation should be based upon numbers, and that property should go with it, and in adopting that basis~~, real~~ property does go with it; and then I maintain, we have the true principle, which is that of "representation and taxation." Mr. Madison says, in the Federalist, which by the way is not a federal book, that "it is agreed upon all sides, that numbers is the best scale of wealth and taxation, as they are the only proper scale of representation" And again he says, "We have hitherto proceeded upon the idea that representation related to persons only and not at all to property. But is it a just idea? Government is instituted no less for the protection of property than for that of the persons of individuals." Mr. Jefferson, in his Notes on Virginia, condemned the basis adopted in the Virginia constitution, because representation was not apportioned according to number. There were the two great apostles of American constitutional liberty; they were the men who presided over the birth of republican government upon this continent. And to charge them with a want of republicanism, because they maintained this principle, would require a degree of self complacency which I do not profess to entertain. There may be some who talk a great deal of democracy without understanding what the fathers of our doctrine and faith as a people have promulgated in relation to it. But as long as I keep myself within the line of these great precedents, I shall think I have at least some guide, some rudder, some chart, by which to steer my bark. But the precedents do not stop here. This doctrine which is called so novel, that representation and taxation ought to go together, and that it is best to blend the two, by taking numbers as the basis of representation, is also the doctrine of the best book of constitutional law in this country, it is the doctrine promulgated by Judge Story. [Here Mr. Howard read several passages from the commentaries, illustrating this doctrine] This doctrine may be new to some, but it seems to be as old as the American confederation. We see that it has been one of the great principles of the American government from its origin to the present moment, that representation and property should go together, as one and inseparable. And why is it so? Men talk about the defenders of their country; but, sir, money constitutes the sinews of war as well as the flesh and blood of the people. I shall not permit myself to be warped from one of the foundations of society by any declamation against the right of property. Now if this is the best basis because it embraces all the property as well as all the freemen of the country, taking the two together, it includes all the interests and all the rights of the community. Now the people may make suffrage as free as they please, but they cannot make a government without regarding the great and essential interest of property, one of the solid foundations of all human society, as it must be of human government. And no declaration about the poor man's rights and privileges, shall make no shield from the assertion of a doctrine which lies at the very foundation of society, and which has been the doctrine of American republicans from the earliest construction of their government to the present moment.

The talk about widows is very foreign to the subject. Who proposed that widows should sit in the halls of legislation? Who proposed that females should legislate to places of power or trust? It strikes me as entirely unnecessary that this matter should be dragged into the debate, so far as the right of suffrage is concerned. Gentlemen seem to confound the two things, suffrage and representation, things as different as night and day; one is the end, and the other the means. It is said that upon the same principle females ought to be allowed to vote. I cannot see the analogy. There is a necessity for the happiness and order of society that the male should exercise the great functions of society, that this distinction should exist. But when we come to representation the rule is different The question has been argued here, as though the man who exercised the right of suffrage was responsible only to himself, as though it were nothing but a personal privilege. It is not so; he exercises that right for society; he exercises it for the whole of his family. He represents those whom the laws do not allow to be otherwise represented there by his vote; the infant, the minor and the female. It is found consistent to represent them by the male vote for the sake of order and security.

I do not wish to draw any distinction between the different classes in the community; I do not wish to do anything which may array one interest against another, or produce feelings of hostility. I wish to adopt a basis which shall [illegible] every interest and every class in society. But as [illegible] recommended in the Report, it declares that [illegible] but qualified electors. It is no answer to say that these qualified electors may put in action and establish rules to protect all. It may be true they may protect all; but then all are not represented. In adopting this rule, therefore, you will provide for a large class of people, who are found in the country, and must necessarily be governed, whom you cannot neglect and do not propose to exclude, the European population. Here let me say, that in speaking of this population, I am not holding out a pin hook to catch qualified voters; because I do not expect it to increase the number of qualified voters in the community, as they must remain here for years to become qualified. What is increased? Their representation according to numbers. And is it not in itself just? They are subject to work upon the highway, to do military duty, to fight for the country, and to pay taxes for its support. And is it not just that their interest should be represented? As I conceive, it is no more than fair. This basis is no great novelty; it is the very basis adopted in your present constitution. The innovation is in the Report of the Committee.

I do not perceive any danger to be apprehended from this population so much talked about. But even admitting the danger I do not see how the means proposed to be adopted can have any effect. If a particular institution is to be attached by foreign votes, it is to be done by qualified electors, and not by women and children, and acres, and cows and calves, or by cotton fields or sugar fields. And it strikes me that by shutting out all property influence, and making qualified electors the exclusive basis, you are placing it more within the reach of attack; for many of these qualified electors may not possess a single slave: while those who are not electors may own large plantations and slaves.

I think the basis proposed will be partial, unequal and injurious in its operation, and instead of having the effect anticipated, will cause precisely the opposite consequence. For it must necessarily array the hostile feelings of our foreign immigration against the Constitution itself: I do not see how it is to be avoided. And now permit me to say, that while I am no native American, I am yet an advocate for maintaining the naturalization laws of the United States, as they are. I think them salutary laws in themselves; it is a salutary principle which obliges emigrants, before they can vote, to serve that apprenticeship, to make them acquainted with our laws and institutions. But it strikes me as unjust to say that during that time neither their property nor their interest shall have any representation. I will not enter here into the defence of the European population; I will not expatiate upon their vices or their virtues. But I must say one thing with regard to the German population of the country. I feel bound as a matter of Justice to say that they are never disorganizers, never radicals; they never attack property. On the contrary, there are none more industrious, more sober, more frugal, or more successful in acquiring property and identifying themselves with the soil and the institutions of the country. Point me to a German, who has been in the country five years, though he has nothing but the labor of his own hands, and I will show you a man who has acquired a little land, who has built him a little cottage, and secured his comforts around him. He advocates the rights of property always; is never a prey to demagogues; never embraces revolutionary doctrines; he is a strong lover of order. I do not ask any haste in imparting to him the right of suffrage, but I do say he is entitled, in some degree, to representation. There cannot be shown a single solitary instance where the German population has shown any disposition to interfere, as a population, with the peculiar institutions of the country.—Some such feeling may have been detected in one or two petty princes from Europe, without power, or influence or place among the great German population of this country. I know of no population which is more zealous for annexation than this class which it is proposed to exclude from representation. This much I will say as a matter of justice to myself.

Mr. *Mayfield* said that the amendment offered by the gentleman from San Augustine, would compel him if he could have the patience of the Convention, to lay before them his views and opinions on this grave and important question. And as the evening was far advanced, and the patience of the Convention had been much taxed, he would move that the report lie on the table, and that this question be made the special order of the day for to-morrow at 11 o'clock.

Carried; and

The Convention adjourned until to-morrow morning, at half past 8 o'clock.

Friday morning, July 25, 1845.

Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Lewis offered the following resolution:

Resolved, That the committee on the Judiciary department of the Constitution, be instructed to inquire into the propriety of authorizing the Legislature to establish separate chancery courts whenever it shall be deemed expedient to do so.

On motion of Mr. Lewis, the rule requiring the resolution to lay on the table one day for consideration was suspended, and the resolution adopted,

Mr. Howard offered the following resolution.

Resolved, That so much of the report of the Legislative committee as relates to the basis of representation, the period of taking the first census and the apportionment of representation until that time, be referred to a select committee of ——— members, with directions to report upon the same and moved to suspend the rule.

Mr *Moore* referred to the remarks of Mr. Howard on yesterday evening, and his quotations from the Federalist, and proceeded as follows: This is a question of great importance, one of the most important which has been submitted to this honorable body. If we wish to secure the institution of slavery against the assaults of northern fanatics, or those of southern serfs or peons, who are equally dangerous, it appears to me that some basis of this kind must be adopted. Yes, sir, there is danger to our institutions, and, as we are told, the fathers of the American Constitution saw the danger fifty years ago, and provided for it in part, as some of my honorable friends around me desire to provide for it now. Sir, I am opposed to all property representation. I mean that of cattle. lands, or money, But if the members of this body shall deem it requisite that some such provision should be inserted in our Constitution, to secure our peculiar institutions, I will be willing to overlook the measure, or to adopt the basis of all the free white inhabitants including three-fifths of the negro population. Texas is peculiarly situated. She has a northern section where her servile institutions cannot be sustained; where manufacturing establishments will be raised, and large numbers of women and children will be congregated, and in some instances there may be one hundred and fifty women and children to one man. I have been in a city where there are no less than three thousand girls, and only a few men comparatively. Such will spring up here, and, let me tell you, such establishments are always hostile to slavery. Westward of the Rio Grande, there are haciendas having no less than three thousand peons, directed and controlled by one man residing in the city of Mexico. I would ask if there is no reason to fear them, when they may be driven up like sheep to the ballot-box. I have been informed that at one of the precincts at San Patricio, some three or four hundred of these people were called up to vote, and furnished with little bits of paper with something written upon them, and told to go and put them in the box. When they had voted, they asked what these bits of paper were put in for; they could not understand it. I will mention another fact which came under my immediate observation. In my own city I recollect an individual was called to go down to the polls and put in a vote. After he had put it in, he mentioned to the young man whom he accompanied, that now he was going to put in another piece of paper for his friend the tailor. Is this democracy? Heaven deliver us from democracy like this. Democracy to be equal should be sustained by men equal in rights, and as nearly as possible equal in intelligence. But when an inferior race is brought in to act with a superior, the rights of the superior, intelligent and enlightened portion are often controlled by a minority. We are peculiarly situated in this respect. Notice how often the peons of the west have come in and enticed our negroes away: how they meet them on an equality. They do not intermarry with the white population: they form their connections among the slaves. I will cheerfully vote for the resolution, and hope my learned friend from Bexar may be one of the committee.

Mr. *Kinney* said: I do not know why the people whom I represent in the western country have been attacked as they have been by the gentleman from Harris. I regret that I was not here on yesterday, to have heard his discourse upon the subject of this people. I must say that so far as I am acquainted myself with the people residing in my immediate vicinity, their behavior is such as to warrant the trust and confidence of at least those people who know them. And they maintain, I believe, as good a position in society as the gentleman from Harris does here among us; what his condition may be among his own people, I do not know.

It is not without reason that I have taken so much interest in the few poor people who are permitted to stay in the western country. Most of the population, or at least a large proportion of that of the place where I reside, is Mexican. They have done as much to sustain the interests of the whole country as the American population: they have been always as willing to pay their proportion towards the support of government as the Americans; as ready to go into the field and fight against a people of their own race for the preservation of our independence. In principle and action they have shown their readiness to do their best for the best interests of the country. And I should think that I was doing them very great injustice, if I did not speak for them when attacked. To me it is a matter of little consequence what a man's name or complexion may be, so that he is received into society, and his actions guarantee him the confidence of those with whom he resides. If a certain population have equal rights with us, secured to them by the laws of the country, then I look upon them as citizens, equally with ourselves. As long as no particular charges can be brought against them, if they have done as much to support the country as others, why these attacks upon them and their rights?

Mr. *Lewis* said: I trust the rule will not be suspended, for the purpose of making the reference proposed. This question has been fully discussed, and I am inclined to think, would be disposed of now in a short time. Although every member in this House, I presume, has concluded what vote he will give. I hope, sir, that under no circumstances will that description of property alluded to by the gentleman from Harris enter into any basis of representation adopted by this Convention. And I will take occasion here to remark, that I apprehend no danger from the machinations of a non slave holding party in this country, or the effect of the efforts of the abolitionists. We shall have no abolitionists here. If there is one passion which predominates over all others in the citizens of this country, it is the desire to hold slaves. They regard them as more valuable than money: and when a man acquires a sufficient amount to allow of the purchase of slaves, that is the first investment he thinks of. The early settlers came here under adverse circumstances. Their wives and daughters have been of necessity forced to the wash tub; and they themselves have seen better days, and dislike to turn their hands to the plough. It has been a first object with them then, to convert a portion of their lands they have acquired into negro property, so as to relieve their wives and daughters from the labors imposed upon them; and then they appropriate whatever funds they may obtain in any way to procure the possession of others. If I had any alarm upon this subject, I should be as seriously affected as any other gentleman although I possess but a small property. Yet to me it is as valuable, as that of any other gentleman here is to him. All the property I have in the world, next to a little piece of land, consists of slaves. But, sir, I consider them perfectly safe. There is, I think, no danger of any assaults upon the institution of slavery from abroad, certainly none at home. But the proposition to make that property the basis of representation, presents a doctrine to my mind more abhorrent than any other: I never can nor will consent to it, so help me God! never. And however far some of my friends may honestly go in this matter, I think they are so far deserting the principles of democracy. Democracy seems to be sunk so low here, that there are none so poor as to do it reverence. But, sir, when you cast it from you, you cast away your fundamental principle. And I am not ashamed to advocate the principles of democracy here or elsewhere. I am no demagogue; but I have principles, which I cherish, and which I will endeavor to practise upon, under all circumstances whatever. And if I should support a system of representation based upon the property which I have, with what face could I return to my confiding constituents, and say to them, upon my property your representation is based, while you, who have fought for the country, who have made the sacrifices consequent upon the early settlement of the country, and have acquired a little spot of land, and gathered a little stock around you, have been left out of view altogether, and have been deprived of your representation, because the alarm was sounded that the negroes were in danger, and we must therefore make them the basis of representation, and thus give that description of wealth an invidious ascendency.

The gentleman from Harris is peculiarly unfortunate in his illustration of the voting of the peons, as he called them, in the west. I know some of them in that portion of the country. But we have a portion of the Mexican population, a small number, in Montgomery county, and I believe as a matter of justice to them, I must say, that they are possessed of intelligence: and I believe their ideas are generally correct in voting; because they all voted for me; and I had no earthly objection; I think in that instance, they voted wisely. But the gentleman from Harris says, these peons of the west are to be mustered into the service in all political contests; that they are to be brought from the west of the Rio Grande, to vote as those whom their friends may dictate, or suggest. Does he remember, sir, while he is insisting upon this, that he is contending for the qualified voters of the country as the basis of representation? Is this not one of the strongest arguments against it?

But I did not get up to make a speech; but to say that I hoped the rule would not be suspended, and the reference not made.

Mr. *Ochiltree* said: When I inform you, Mr. President, that I have really not made up my mind how I shall vote upon this question, when it shall come finally before this body for determination, it may no doubt create surprise that I should think proper to address the House upon this occasion. But there is a subject, sir, which has been mentioned or alluded to by the various gentlemen who have addressed the Convention, in terms indicative of so wide a difference in feeling and opinions from those which I entertain, that I cannot refrain from giving utterance to my views of the future position of the slave holding State of Texas. Gentlemen affect to treat as a light matter, or spurn contemptuously, any thing like a reference to the prevalence of abolitionism within the limits of this State. It may be a monomania with me: it may be a feeling of a visionary character: but I pledge you my honesty, Mr. President, that I have more fears of the introduction of that fanaticism than of any other evil of any nature whatever. The geographical situation of the country, the inducements held out to the particular class alluded to, go to evince that we have every thing to fear: that we should watch with jealous vigilance their approach within our borders. and that we should adopt speedy measures to restrain their deleterious influence upon our institutions. It is well known that there is already a powerful party in the U. States, a trained band fully and effectively organized for the purpose of abolishing slavery by means of political action I allude to the liberty party. Its wide spread organization extends from New York as a centre through and around the Eastern, Northern and Western States. It is sparing no means to carry out its ends; its doctrines are every where publicly promulgated and zealously propagated. It has been stated, and I believe truly, that in the late Presidential contest, the leaders of that party exerted effectively their mighty power to control the destiny of the rival political parties in the United States. That the direct influence of abolitionism is small, I am willing to admit: but when you recollect the close approximation of parties in the United States, you will perceive that a very small number can exercise a powerful influence. United and organized, ready to cast their votes as their heads may direct, that party cannot but wield a powerful influence. Look at the geographical position of Texas. Upon the coast we have a body of rich and luxuriant lands, necessarily to be cultivated by slave labor: while on the North, North west, and West, we have a country which will be chiefly occupied by graziers and small farmers, who will come here for the purpose of exchanging the cold climate and sterile soil of the North for our genial seasons and luxuriant prairies. They exchange Illinois for Texas. They leave a country where they are compelled to labor six months in raising a crop, and spend the next six in feeding it away, for the purpose of settling here, where with a month's labor they can raise an ample supply of provisions for their families, and where our broad and fertile prairies afford an inexhaustible range for their cattle. Manufacturing interests will also come here: every inducement is offered to invite them When they shall get a foothold in the country, you cannot estimate their alarming tendency in relation to our slave institutions Whether the different schemes proposed for the basis of representation, free population or the qualified voters, will have any bearing upon this subject, I am not prepared to say. But this I would say: let us not treat it lightly, let us consider it seriously; and let us adopt any measure which will afford the best protection. I do assure you, sir, though neither a prophet, nor the son of a prophet, that there will be more to fear from abolition influences not ten years from to-day, than there is from the combined powers of Mexico and all her adherents. And unless we guard the portals with unceasing vigilance, the enemy will gain entrance and get foothold It was for the purpose of expressing my opinions upon this subject that I rose, and not upon the particular action proposed at this time. There are gentlemen here whose sagacity I have never before distrusted, who seem to me to display the most absolute blindness to the consequences which threaten them. Have we not been told by one of the most learned, astute and sagacious politicians of the United States, one who has fixed his name in letters of living light upon the scroll of his county's history, John C. Calhoun, that he has no doubt of the fact that there is a most powerful influence at work on the other side of the Atlantic for the purpose of effecting the gradual abolition of slavery in the United States. We have Mexico on one side of us: the terms of annexation expose us to the risk of an abolition State in the North, and we are compelled to have a free State in the West in case of a division. Then it becomes us to be wide awake: not to sleep upon our post; but forthwith to shake off the listlessness of feeling which has stolen over us in relation to this most important subject.

Mr. *Jewell* said. It appears to me that the course this debate has taken proves satisfactorily the urgent necessity of suspending the rule for the purpose of referring the whole matter to a select committee. I confess that my predilections are in favor of adopting the free population as the basis of representation. But another important question has been incidentally brought into the discussion, which should not be disguised, but ought to be met fairly and promptly. If gentlemen residing in the lower section of the country wish to erect a battery against abolition, if they wish to insert in this Constitution some article which may operate herefter for the protection of a particular species of property, let them bring forward some specific plan, let them suggest a remedy for the contemplated evil, let it be discussed, and I will go as far as the foremost in its support, if consistent with the principles of republicanism,—democracy I was going to say, but that poor word has been found of late in such bad company, that even her friends appear to suspect her character. I do not wish that two great and distinct questions should be mingled with the basis of representation. It would seem to be the object of gentlemen now to protect the slave population incidentally. That is an entirely distinct question. If they propose that either branch of the Legislature shall be based upon property, I am willing to meet the question. But as the subject is mixed with another question entirely distinct, I conceive that it would be proper to refer the whole matter to a select committee.

Mr. *Davis* said: I shall vote against the reference If the members of this House are not willing to let a portion of the black population enter into the basis of representation, they will vote against it. Gentlemen seem to have great fears in relation to that species of property. I myself live and expect to live in a county where a large proportion of the population will be negroes; a county where choice lands will be wholly devoted to the cultivation of sugar, and occupied by large slaveholders But I see no necessity myself for protecting this portion of the population. I do not believe that the intelligent politicians of the north really desire the abolition of slavery. In my opinion, they use the question merely to make capital, and sound the alarm whenever they wish to bring fanaticism to bear in the attainment of their objects. What interest has the north in abolishing slavery? How could the north be benefitted by making a wilderness of the fairest portion of the U. States? For white labor never can raise cotton or sugar; it must be done, as experience has abundantly shown by slave-labor. And the great and mighty market for northern manufacturers would be closed. I know there are fanatics those who are willing to sacrifice the interests of the country and everything else to their abstract opinions; but they are held in check and led by the master spirits of the north; and should they become dangerous, they would probably be checked up. I have no fears upon that question, none upon earth. Gentlemen tell us of a powerful party on the other side of the water. Great Britain, it is true, has abolished slavery in her islands; and what has been the consequence? Ruin is staring them in the face, and she is now making efforts to place there again that description of labor If you look at the information given by Mr. Wise when minister at one of the southern republics, you will be satisfied of that fact. British capitalists in all probability are employing American vessels to go to Africa and get slaves, to be taken by British cruisers, not to be liberated and sent back to Africa, but to be sent to the West India Islands, where they are indented. This indenture is a mere farce; they are brought there and made slaves again. One of the great objects of Great Britain in abolishing slavery in the United States, is to subvert that mighty government. Will the north stand by and see a policy of that kind carried out, without raising their voice against it? No, sir; it will then cease to be a party question; it will be a national question. All the powerful efforts of the mighty men of the north will then be brought to bear against it. I entertain no fears upon that subject.

Mr. *Young* said he hoped it would not be referred He thought it had been fully and fairly investigated. While up he would remark that some gentlemen seemed determined to fix abolitionism upon the northern portion of Texas. He had never heard an individual in the portion of country which he represented advocate anything like abolition principles; they were perhaps as far from entertaining such notions as the gentleman from Harris himself He did not know a single individual there who did not use his best exertions to get hold of negro property. It was contended that this country, from its location, must finally be opposed in interest to the southern country. Why? Suppose they do raise hogs, sheep and cattle, and horses If they can raise more than they want for their own consumption, what do they do? They look to a southern market; and by this means the northern interest is intimately connected with the southern. It is gravely argued that these causes will operate so far that this country must be surrendered to the abolitionists. He contended that this is fighting against a shadow. He would venture to say that three-fourths of the emigration from Illinois, Indiana, and other northern states, settled there with the determination, so soon as they could do so, to purchase slave property. If the people of the south raise sugar, those of the north must expect to purchase it; and they must buy our meat, and buy our corn. It seemed to him that gentlemen were raising a jealousy between the two sections of the country, when their interests are all one and the same. Some had spoken of persons from the northern states who would come to this southern country for the purpose of changing our institutions. This seemed to him a mere shadow, an unsubstantial notion. There is not, he believed, an individual in the whole Red river country, who would suffer a man to live who should come there and advocate abolition.

He was opposed to referring this subject to any committee, to go through the whole debate again.

Mr. *Ochiltree* and Mr. *Lipscomb* explained, that in their remarks they had not referred to that portion of northern Texas which was immediately represented here, but to a section still farther north.

Mr. President *Rusk* addressed the Convention. Mr. Horton in the chair; I have always found it the case, Mr. chairman, that by debating a question we are much less likely to arrive at calm and correct conclusions, than by quiet reflection. A great deal of extraneous matter has been brought into this debate. In the first place, the rights of women and children, in the imagination of some gentlemen, have been swept entirely away. Some other gentlemen have found negroes to be intimately connected with this subject. Now I do not think that women and children and negroes are much concerned in the matter. Some have seen a northern interest growing up against a southern; some believe that we are in imminent danger from some source; others that we are in no sort of danger. I think, sir, there is a medium between the two extremes. It is idle to tell us that to question the security of the tenure by which we hold slave property, is a mere bugbear, is all moonshine. When I see a powerful party formed in the United States with the express and avowed object of exterminating slavery from the country; when I see that party headed by a distinguished man who has been President of the United States; when I see fanaticism become so powerful that ladies leave their homes to come to the southern states, and run the risk of getting into penitentiaries, in order to persuade negroes to run away; when I see the British Government abolishing slavery in their own islands for the purpose of reaching the United States, and destroying it here, making it a grave subject of discussion in parliament, as it is with their powerful society for the abolition of slavery; when I see that government operating here through her minister upon that question; when I see the system of policy pursued by another minister here, in attempting to introduce a large population by way of Franco-Texian bills, which must come here with feelings adverse to this institution; when I see all these things, it is idle to tell me that this species of property is not in danger. I think the convention ought to do something to guard as well the rights of property as those of the person. In a republican government, composed of people born and raised in the United States, where the constitution and declaration of rights have been their political bible, I apprehend under no particular system would there be any great danger to personal rights. But property is weaker, and should therefore be taken into special consideration. These are the two grand objects of government, person and property; and should both be fully protected. It is useless then, it is a total waste of time which should be reserved for other purposes, to array property and personal rights in opposition to each other. I have thought this a very difficult subject; it, may seem plain to some gentlemen. But the framers of the constitution of the United States did not think it quite plain; the framers of those of the States did not think it a plain question. They thought it one of the most difficult, and upon a little reflection gentlemen will perceive that it is one of great difficulty. It is out of the power of human wisdom to construct any scheme which will work with perfect fairness. In any way you may adopt there will be an inequality. If for example, you take one thousand as the scale of apportionment, in a county having one thousand and forty there will be forty who have no political weight. It is totally impossible to devise any way which would give each portion of the country exactly its due weight.

I trust there will be no belligerent feelings between the north and the south. I think a compromise can be effected which will suit everybody. An observation which fell from my colleague from Nacodoches, called out the gentleman from Red river. Now there is no difference of opinion between them; he did not mean to include that county, but to say, striking the line above Fannin county, that there was a large portion of Texas, comprising a fine country, capable of sustaining a dense population; and it is likely to be taken possession of, if the war with Mexico goes on.

There is another exciting subject, one which I trust will be allayed. It is useless to conceal the fact, that sectional feelings have grown up in the country. The time has arrived, I trust, when that ill favored fiend cannot be exercised: and all can meet and say they belong to Texas, and feel as much interest in one section of the country as another; when the east and the west, and the middle and northern sections can all come in here in this Convention for their proper weight in representation. We are bound to fix this matter by compromise, let us do so in the spirit of good feeling. The better plan in my opinion is to refer the whole matter to a committee who may report some plan for our present representation, which will deprive no portion of the country of the rights which we are bound to protect.

Mr. *Mayfield* said: I do not rise for the purpose of indulging in any reflections upon the course of members in relation to this question. I will simply however, remark, while up, that it is forcibly impressed on my mind, that all the legislation as well as action of this convention should be directed exclusively to our peculiar interests and the political relations in which we stand to the rest of the world. We have a high political interest to maintain, with which the habits and pursuits in life of our citizens must necessarily be forever identified; as is clearly manifest when we take into consideration our climate, soil, and the productions of that soil. When we look at Texas in her present situation, it is true that there seems to be in some degree a mingling of conflicting interests. But the great and permanent interests of the State must first be guarded and protected. Texas is almost exclusively an agricultural country. Her geographical position, her climate, soil and productions clearly indicate that her great wealth is to be derived from the cultivation of the earth. The resources of our country then cannot be developed, without the application of slave labor and slave capital. It is true, that in times to come there will arise another great interest which should also have its guard and shield, and complete protection thrown around it; that of grain growing and stock raising. Then if any compromise can be effected, and we can adopt a system by which all the several interests will receive the guards necessary to their proper maintenance, I am willing to support it as the correct course to be pursued upon this occasion. The report of the committee has elicited much debate and developed a great contrariety of opinions. And I am happy to discern this morning a disposition on all hands to come to some common understanding, and to extend a strong protecting arm to the most important institutions and greatest interests of our country; taking at the same time into view the great danger threatening the institutions of the land in consequence of annexation to another government, and one of confederate States. In connection with this subject I will call your attention to a recent debate in the United States Congress, in which a distinguished statesman of South Carolina, and one of the members from Alabama took part in opposition to the abolition doctrines of John Quincy Adams. Upon which occasion the southern statesmen repelling the assaults made upon the institution of slavery in the south, were replied to by Mr. Adams, who, especially directing his remarks to the gentleman from Alabama, said, that so far as this institution was concerned, none of the slave or southern states had adopted the principle of the federal basis of representation, and particularly that it had been abandoned by Alabama, the state of the last mentioned gentleman, and added that he, of all others should not complain, inasmuch as by the fundamental law of his own state, this principle had been abandoned, and representation based upon free white population. Upon this occasion he gave notice, that so long as he should continue as a statesman to mingle in the political affairs of his country, he would, session after session, and year after year, bring this subject to the consideration of the American people. And in this is there no cause of alarm? Is there no danger? Is there no apprehension to be entertained, when a man so distinguished, one who has occupied so high a political station gives us notice and warning of the onward march of abolitionism? Let us, then, take warning in time; and give to our slave property that guard and protection, which will make Texas, occupying the position which she does, both political and geographical, when the great struggle shall hereafter arise, to become the asylum and sheet anchor of this institution. I speak upon my own part, as well in behalf of the West, as of my country at large, which, I will frankly say, has a stronger hold upon my affections, and presents a stronger appeal to my patriotism, than any sympathies which I have entertained or may ever entertain for the particular section of country in which I live. Then I would say on this occasion to my Western brethren, and would appeal to my fellow citizens from the East, let us upon this great question, and all questions which have the least tendency to disturb the public mind and sever us in opinion and sentiment, unite and put our shoulders to the wheel, exerting together our best efforts for the protection of the whole. Let our motto be "Texas, and nothing less than Texas." Therefore, without obtruding any farther remarks at this time, I shall vote for the reference as proposed; and I hope the committee to be raised will come to some compromise, such as will give satisfaction to the members of this Convention and receive the approbation of the people.

The question was then taken on the motion to suspend the rule, and lost; and the resolution was laid on the table one day for considtion.

On motion of Mr. Davis, the special order of the day was taken up, being the amendment of the committee of the whole, to the 30th section of the report of the committee on the Legislative department.

Mr. Darnell withdrew his amendment to the amendment of the committee.

On motion of Mr Mayfield, the amendment of the committee to the said 30th section, and all other sections of the report that relates to the basis of representation, and the subject of taking the census, was referred to a special committee; upon which the ayes and noes were called, and were as follows:

Ayes—Messrs President Rusk, Anderson, Armstrong of J., Armstrong of R, Baylor, Bache, Brown, Caldwell, Cazneau, Cunningham, Cuney, Forbes. Hemphill, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Kinney, Love, Lipscomb, Mayfield, McGowan, Miller, Moore, Power, Runnels, Ochiltree and White. 31.

Noes—Messrs. Bagby, Brashear, Burroughs, Clark, Darnell, Davis, Evans, Everts, Gage, Hicks, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McNeil, Parker, Raines, Scott, Smyth, Standefer, Tarrant, Van Zandt, Wood, Wright and Young. 26.

Mr. *Baylor* when called upon to vote, said that he should vote for the reference, not with the view of sustaining any ideas suggested during the debate, but in accordance with the old parliamentary rule, to give the friends of any particular measure every opportunity to mature it, and bring it before the House in the best possible shape of which the subject is susceptible. But he should in due time give his opinion upon the proposition. He should protest against property being made the basis of representation, in any shape.

Mr. Jewett moved that the committee consist of three members from eastern Texas, three from middle, and three from the western districts of the country, which was carried, and

On motion of Mr. Rusk, three were added from the northern division of the country.

On motion of Mr. Moore, the President was invited to serve on said committee.

The amendment of the committee of the whole, as a substitute to the 31st section, is as follows:

The first election for Senators and Representatives under this constitution, shall take place on the day of and shall be conducted as near as practicable, according to the law now in force regulating elections, and the Senators and Representatives so elected shall continue in office until the day of 1846, when a general election shall be held for Senators and Representatives throughout the State, according to law, who shall hold their offices for the term prescribed in this Constitution. The Senators thereafter, shall be elected every four and the Representatives every two years, at such times, places, and in such manner as the Legislature may hereafter prescribe by law; which was read and adopted by the Convention.

The additional section, of the committee, to the 33d section, was also adopted, and is as follows:

The members of the Legislature shall, at their first session, receive from the Treasury of the State, as their compensation, three dollars for each day they shall be in attendance on, and three dollars every twenty five miles travelling to and from the place of convening the Legislature.

The following additional section of the committee was adopted as the last section of the report of the committee on the Legislative Department.

In order to settle permanently the seat of government, an election shall be holden throughout the State at the usual places of holding elections, on the first Monday in March 1850, which shall be conducted according to law, at which time the people shall vote for such place as they may see proper, for the seat of government; the returns of said election to be transmitted to the Governor by the first Monday in June; if either place voted for shall have a majority of all the number of votes cast, then the same shall be the permanent seat of government until the year ———, unless the State should sooner de divided. But in case neither place voted for shall have a majority of the whole number of votes given in, then the Governor shall issue his proclamation for an election to be holden in the same manner, on the first Monday in October, 1850, between the two places having the highest number of votes at the first election. The election shall be conducted in the same manner as at the first, and the returns made to the Governor, and the place having the highest number of votes shall be the seat of government for the the time herein before provided.

On motion of Mr. Rusk, the report was ordered to lay on the table, and the secretary required to make out a fair copy, embodying amendments.

On motion of Mr. Anderson, the report of the committee on the Judiciary Department was taken up, after various motions to adjourn.

On motion of Mr. Scott, the Convention resolved itself into a committee of the whole—Mr. Horton in the chair.

In the 1st section, Mr. *Lewis* moved to strike out "inferior," and insert "others."

It has been considered good policy, he said, in several states to establish separate chancery courts and separate criminal courts; and he thought it good policy here to give the Legislature the power to establish them whenever the situation of the country should make it right and proper.

Mr. President *Rusk* said that he should vote against the amendment for two reasons. In the first place, he did not conceive there was any necessity of a separate chancery court. By the practice now, you can obtain in the district courts everything you could obtain in chancery. It is a less expensive system to suitors, and less difficult in practice. If in any proceeding in law, it becomes necessary to resort to the conscience of a party, our laws point out a plain and easy method. Every thing can be done by the present system in the district courts Again: it is established that the State government must be erected upon an economical basis. If you give the Legislature the power to create additional officers, they will invariably establish them. Some gentleman will conceive that he is entitled to be chancelor, and will induce the members of that body in time to authorize and establish the office. If not in the first or second, by the third year they will establish any office you may now authorize them to establish.

Mr. *Lewis* said: This would not make it imperative to establish a court of chancery more than any other court demanded by the wants of the country. It may be deemed necessary to establish criminal courts, perhaps others. He apprehended, and it was to be presumed, that the Legislature would never exercise this power unnecessarily, or to the detriment of the country, consisting of representatives of the people whose wishes and interests, it might be fairly presumed, would be known to them. There can be no harm in giving them the power. He recollected that in the early settlement of Alabama, there existed there at that time, the same sort of jurisdiction in matters of law and chancery which existed here. It was found exceedingly inconvenient and detrimental to the interests of parties concerned; and after a number of years it was found necessary to separate the courts. Now the existence of separate chancery courts have given very general satisfaction. A Judge who is called upon to decide cases in law and equity in the same hour, cannot do justice to the parties concerned. A mind constantly engaged in the investigation of matters of law, is not in a situation properly to investigate questions of equity and chancery jurisdiction.

Mr. *Davis* said: In Alabama, the courts of law and chancery are separate and distinct, though the judges are made the chancellors But here we get along with some degree of convenience under our present system. He was opposed to striking out, for fear that the Legislature, some time or other, might think it necessary to establish separate chancery courts.

Mr. *Baylor* said: As chancery courts were established some time before he left Alabama, he thought proper to remark, that so far as their practical operation is concerned, from all he can learn, they have not worked well. The tendency is to multiply the officers of the state, with little benefit to society. 'They should not be multiplied by and what we absolutely require. If you open a door for intrigue to the Legislature, efforts will always be made to establish chancery courts. He thought the bill as it now stands, as good as we can possibly have it.

Mr. *Brown* said: We have in our courts a practice with which the country is acquainted, and which attains all the objects of a separate jurisdiction. By the present system, cases arise indiscriminately upon the docket; and if a case ought to be governed by the rules of the common law; it is governed by them; if by the rules af equity, it is governed by that. As to chancery, there seems to be no beneficial object to be gained by the amendment.

Mr. *Lipscomb* said: So far as the history of chancery courts in Alabama is concerned, he did not know whether the system works well or not. But he knew that at the time when the courts were separated, it was absolutely necessary. The chancery dockets in the State for years had never been disposed of at all. It is the natural course, where juries and witnesses are in attendance to take up the common law side first. The consequence was, that the term would expire, and the chancery docket would remain untouched: that there was a vast accumulation of business. Our judges are called upon now, if they believe a case to belong to law, to take it up and try it as such: if to equity, to set it down as such, and try it as such. Some of our judges believe, that, with the mixed power that they possess, they are called upon to refer every thing t oa jury. It is the practice of some judges. in; certain cases, to put it to the jury to say whether equity principles prevail, or not. Others, he thought, more sensibly, make up an issue of fact for the jury. If we should have, for a series of years able judges, who would build up this mixed system, he was not prepared to say but it would work well.

But at present, our system does not work well. He did not feel very much interested in this question, because he believed it would all depend upon the judges we should first have.

Mr. *Henderson* said: If the object is to effect the speedy trial of causes, it would seem a more easy matter for the Legislature to pass an act requiring the judges to dispose of them as they are recorded upon the docket according to age and numer. Then it would be unnecessary to tax the country with the support of an additional number of judges. He could see no good in the amendment He believed it the general opinion of the people, as well as the majority of attorneys in the country, that something like our present system should continue in operation.—He thought it could be matured, so as to give general satisfaction, and promote justice.

Mr. *Ochiltree* said that he had witnessed the efficacy of the present system in dispensing justice and establishing truth. He should be loth indeed, to see a separate chancery court established in Texas. He hoped the section would be suffered to remain as it is: and that hereafter the Legislature would look upon it as precluding them from establishing a separate chancery court.

Mr. *Hemphill* said . The distinction between law and chancery is by no means natural. It is artificial; known only to the jurisprudence of England, and unknown upon the continent. Many of our lawyers lived here several years before they knew any distinction between them. In the civil law, or the Spanish law, all is equity and all is law. The judges, before 1840, were under no necessity of making any distinction: they could apply every principle of justice known to the laws of the the land in determining any controversy. There is a section in one of our laws, authorizing the judges to apply either: and a judge is now enabled when cases come before him, to apply either the principles of law or those of equity. He saw no necessity for a separate chancery court. He thought with his colleague from Washington, that it depended a great deal upon the judges. They will undestand what is law, and what is equity, and if so, will be able to build up a good system.

Mr. *Love* said: He was satisfied with the provision as it was. The system now recommended by the committee, is one which is engrafted to some extent upon our institutions; and one that he wished to see continued in operation.

We are too apt to want to do every think in our own day as we wish, and to preclude every body who may come after us from doing as they choose Occasions may arise, when the burthen and press of business may render it indispensibly necessary to create another tribunal with jurisdiction over a particular class of cases. He did not see any great evil which had arisen from the union of jurisdictions in states where they are united. At the same time he did not see any evil in giving the Legislature the power to establish such a separate court; he did not think that body would do it. It would be expensive and inconvenient; and unless an emergency should arise to render it necessary, he did not think it would be attempted.

Mr. *Young* said: By the law of the country at present, the district court has jurisdiction as well in cases of equity as law; and it is the duty of any judge, upon the examination of a case, if there seems sufficient equity in it, to transfer it at once to that side of the docket. It was objected that by this means all suits in equity are postponed. This might be avoided by the legislature of the country, which might fix a sufficient time for court, and divide it into three distinct periods; and the judge, in the first period, should settle all suits at law; in the second, in chancery; and in the third, dispose of the criminal docket.

When those suits are settled in the district courts, the expenses are no greater than those attendant upon suits at law. But if you change them to a chancery court, no lawyer will appear in a case for less than twenty-five dollars; whilst you can get them in a court of law for ten.

It seemed very clear to him that the present system was as wise and good a one as could be adopted.

Mr. *Brown* suggested, that under the present system, if you found that you had brought your case within the wrong jurisdiction, as sometimes might happen to the best lawyer, your client would not be thrown out of court, but his case would only be turned over to another docket, without expense. He is a very good lawyer, and knows all about his case, who knows which jurisdiction it belongs to. That difficulty is wholly avoided by the system as it stands.

The committee refused to strike out and insert: and thereupon rose, reported progress, and asked leave to sit again: which report was adopted, and the Convention adjourned until half-past three o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment, and went into committee of the whole, on the report of the committee on the judiciary department. Mr. Moore in the chair.

In the 3d section, Mr. Henderson moved to insert after "only" the words "in all criminal as well as all civil cases." He had lived in a state, North Carolina, where a man may appeal in any criminal cause, and it worked no inconvenience.

Mr. Scott moved to strike out "criminal as well as" from the amendment.

Mr. *Ochiltree* said: He should support the amendment of the gentleman from Montgomery. The path in criminal cases is a well beaten one; error very seldom takes place. Precedents are against the right of appeal in these cases; if it be the case in North Carolina, it is not the case that the right of appeal is granted in any other state he had lived in. Points are certified up as novel, however, in criminal cases. If you give this right, every villain in the land will go unwhipped of justice in all time to come. He thought no protection of this kind was granted in Georgia, Tennessee, or Alabama, with the criminal proceedings in which he was conversant. He thought it was sufficient to allow points to be certified up as novel and difficult.

Mr. *Hemphill* thought the gentleman from Nacogdoches was mistaken. He came from a state in which he had lived a great many years, where the laws allowed an appeal in criminal as well as civil cases. No criminal was ever tried in South Carolina but had the right of taking up his cause to the highest court in the land. He was not obliged to depend upon the caprice of his judge with regard to points novel and difficult. This sounds too much like the common law doctrines of two hundred years ago, when criminals were not allowed to appear by attorney, &c. The state of Louisiana, after her courts had decided some years ago, that, according to the common law, there was no appeal in these cases, has been obliged, by an amendment of her constitution, to constitute a tribunal for the trial of criminal cases in appeal. He was in favor of giving the supreme tribunal jurisdiction in these cases; though it might be, he thought, confined to the law.

Mr. *Love* said: He did not see the possibility of convicting a man for any crime, if the amendment should be adopted. Besides, it gives privileges to one class which it might deny to another. He believed those who contemplated the commission of crime, took the chances of acquittal into the calculation as well as any thing else. There are no jails that pay their criminal expenses; jail doors are thrown open because neither the sheriff nor the county has the money to support the prisoners. A man might have to remain one, two, or three years, before he could get his case taken up, a burden to the county. Some few of the states, three or four, perhaps, admit the right of appeal in these cases. It is done, however, with certain restrictions. If you adopt it in the constitution itself, without restrictions, you can place none upon it by law.

He had always thought that the great evil in the administration of criminal law was, that you could not try the crime at the moment of its commission, and execute the punishment before the sun was down. The longer the delay, the greater the incentive to commit crime.

Mr. President *Rusk* said: It seems the legislature can make a law giving the right of appeal where the amount of one hundred dollars is in controversy, and a party is dissatisfied with the decision of the district judge (and what is a district judge, but a man subject to like passions with ourselves?) But if his reputation is at stake, if a disgusting punishment is about to be inflicted on him at the whipping post, or his life is to be taken, in order that criminals may not go unwhipped of justice, his every thing is to be made to depend upon the fiat of a single district judge. No consideration of expense will ever induce me to support a proposition so repugnant to my feelings.

Mr. Scott withdrew his amendment to the amendment, and Mr. Davis offered a substitute, providing for the appellate jurisdiction in civil cases and in criminal cases, in such as shall be prescribed by the legislature: which was rejected.

Mr. Lipscomb offered an amendment to strike out "only" and insert after "state" the following: "and in all criminal cases it shall be competent for any judge of the supreme court to grant a supersedeas and writs of error, returnable before the supreme court, if, in the opinion of the judge to whom application is made, error has intervened." Adopted.

Mr. Love offered an amendment requiring bond and security for all costs, &c., and providing that bail shall not be allowed after conviction.

Mr. *Rusk* said: The operation of that would be to give the man who was able to do these things a fair opportunity of going before the higher court; and the poor man, who had neither friends nor money, would be excluded from the benefit of one of the provisions of your constitution.
The amendment was rejected.

Mr. Van Zandt offered an amendment: after "issue" insert "writs of habeas corpus, and, under such regulations as may be prescribed by law, writs of injunction, &c." Adopted.

Mr. Forbes moved to strike out "not more than three places," and insert "the seat of government." Rejected.

Mr. Scott offered a substitute for the whole section, which was rejected; and the section, as amended, was adopted.

On the motion of Mr. Van Zandt, the committee rose, &c., and the Convention adjourned until to-morrow morning at half-past eight o'clock.

Saturday, July 26th, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain, as follows:

Oh, Thou, before whom we are again permitted to come, for the purpose of making prayer and supplication. While we are thus permitted to address thee this morning, we would make our humble confessions, and acknowledge the manifold obligations we are under to thee for the mercies of the night past and the light of this morning. We would ask thee to pardon our multiplied transgressions; cleanse the thoughts of our hearts by the inspiration of thy Holy Spirit, that we may perfectly love thee and worthily magnify thy great and gracious name. Throw around us the arms of thy mercy, we entreat thee: guide us by thy counsels and support us by thy grace, and remember with us all we should pray for every where. Smile, we entreat thee, upon all who are travelling by land or by sea. Bless this land and nation. Smile upon this Convention in all its deliberations; grant that all their doings may redound to thy glory and the best interests of the community. Regard with us all who have said, *pray for me*, and all whom duty, grace, or gratitude, require us to pray for. And, finally, when we have done with the sorrows of this life, bring us to thy everlasting kingdom, through Christ, our redeemer. Amen.

The President announced the special committee contemplated by Mr. Mayfield's motion of yesterday, referring the amendment to the 30th section, and all other parts of the report of the committee on the legislative department, relating to the apportionment of Representation— Messrs. Mayfield, Runnels, Howard, Moore, Love, Lewis, Henderson. Armstrong of J., Ochiltree, Holland, Tarrant, Everts.—12.

Mr. Evans presented the memorial of Charles S. Hensley, agent and attorney for Wm. S. Peters and associates, protesting against any action of this body on the subject of the colonization contract entered into between this government and the said Peters, and for other purposes, which was read by the Secretary.

Mr. Love moved to lay the memorial on the table, which was carried.

On motion of Mr. Evans, Mr, Hensley was authorized to withdraw the memorial.

On motion of Mr. Cazneau, the Convention took up the

ORDERS OF THE DAY.

Being the report of the Committee on the Judiciary Department.

On motion of Mr. Parker, the Convention resolved itself into a committee of the whole, on the said report, Mr. Moore in the chair:

Mr. Lewis moved to strike out the 5th section. Lost.

Mr. Young offered an amendment: "The judges of the supreme and district courts shall be elected by joint vote of both houses of the legislature; provided, the person elected as district judge shall be, at the time of his election, a resident citizen of the district for which he is elected." Rejected.

Mr. Lewis offered an amendment, providing that the judges of the supreme court shall be elected by the qualified voters of the state; and those of the district courts by the qualified voters of the districts, shall be resident citizens of their districts at the time of their election, and shall continue to reside therein so long as they exercise the functions of their office. Rejected; and the section adopted.

In the 6th section, Mr. Runnels moved to amend the latter part of the section, so as to make the appointees hold for the term for which they were appointed, and not for seven years.

Mr. *Lipscomb* said: He hoped the amendment would not prevail. His objection was this: it would occasion too many appointments to be made at the same time. It is very desirable to separate these appointments, and let them fall at different periods, so the judges may not all go out of office at the same time. If the section is left as reported, casualties and resignations will soon produce the desired inequality; but if you let them all go out at the same time, you will have too many new judges all coming in together, without the advantage of the experience of the others. An objection might be made to the patronage of the governor, if called upon to select the whole batch at once. The candidates and their friends would be able to exert a greater influence than if one or two only were appointed at any one time.

Mr. *Hemphill* said: He believed there was but one office in the government, in which there was any necessity of filling a vacancy until the expiration of the term; that was the office of senator. It has been supposed to be proper in the organization of the senate, that a certain portion should vacate office at a particular time, a certain class thrown out and their place supplied. But he could see no reason why, when a judge has departed this life, any one should be appointed to fill the remainder of his term; there is no reason at all in this case for connecting the dead and the living. If there is any object in a term of seven years, it is to increase firmness of character in the judges, by giving them a long term of office.

Mr. *Runnels* said: It would be an easy matter to provide that they should be classed, and go in and out at different periods. But he would prefer the plan he had proposed. It seemed to him better that the term of office should expire, and vacancies be filled, at regular periods. He did not, however, think it a matter of much consequence.

Mr. *Love* thought it would promote the independence both of the legislature, or appointing power, and the judiciary, to have the appointments fall at different periods And this would prevent any possible combination, based upon the fact of so many vacancies occurring at the same time.

Mr. President Rusk offered a substitute for the 6th section, providing that the judges of the supreme court shall hold their office for a term of five years.

Mr. *Ochiltree* suggested six years, as the sessions of the legislature are to be biennial. Amendment accepted by Mr. Rusk.

Mr. *Mayfield* said: This makes no provision for filling vacancies. And really for myself, however much I may regret the difference of opinion, I think that even this period is not long enough. I think the 6th section will require some amendment, and can be so modified as to meet the views of the committee, whatever mode of election may be adopted. The objection that there will be two batches of judges to be appointed by the first Governor, can be obviated by shortening the period of office of the first judges, and lengthening that of those who come afterwards. The committee as I understand, were influenced by some consideration of this sort; that in the early history of our State, in our judicial relations as well as our political affairs, we should provide for nothing permanently. They did not wish to place in the hands of the first Governor the power of imposing upon the people for a long series of years, any particular class of officers. And as it concerned the judges, they considered that whatever learning and talents our bar might be at present possessed of, in the emigration which will flow into the country, as whether justly or not, it has the reputation of affording a fine field of interprise to the legal profession, men of the first legal eminence and highest professional standing, would in a few years come to this country, and by shortening the term of the first set of judges, if such men should think proper to identify themselves and their fortunes with the country, the people would then have the opportunity of selecting from those who may come in within the next few years. We do not thus act unjustly towards the members of the profession at present in Texas. There are men among them who would ornament any bench, or illuminate any bar or profession; men who may become distinguished and render the greatest services to the country when elevated to high judicial stations. At the same time we must take into consideration the vast interests to be adjudicated, and the situation of our professional gentlemen, for I will make the assertion that there is scarce one among them possessed of a fair reputation, of industry and laborious habits, who is not more or less interested in these great and perplexing questions already agitated, and which may soon become of more serious importance than heretofore. Then if you at once declare that the *judges first elected or appointed* shall hold their offices for the term of six years, you will necessarily impose it upon the appointing power wherever you may vest it, to select your judges from men more or less *interested* in exciting questions, many of which ought to be determined before the expiration of six years.

For myself, I will say at once, that I would be in favor of having the Judges of the Supreme Court hold their offices for twelve years, and the District Judges for eight. I believe that the very term itself has a great influence upon the independence and firmness of character of the Judges.

Mr *Rusk* said he should withdraw his substitute with the view of permitting these sections to remain as they now are; as it is not yet positively determined for what length of time the Governor shall serve, and it is desired not to give the first Governor the appointment of two batches of judges.

He was in favor of a long term of office for the judges. He looked upon the judiciary as the bulwark of our liberties; as the most important branch of the government, and one which should attract the notice and reflection of members more than any other.

Mr. Lewis moved to strike out "seven" and insert "six." Lost.

Mr. *Henderson* said, if the object was to avoid giving the Governor the appointment of two batches of judges, he would offer an amendment.

He accordingly offered an amendment providing for that object.

Mr. *Forbes* thought that what is urged here as an objection, is a benefit. The objection is, that the appointing power might be made use of to serve party purposes. Now if you give this power to the first Governor, if the judges here proved to be good, he will probably renominate them. Whereas if you give it to another Governor, who will come into office with different political views, he will probably nominate those of his own party or peculiar opinions. He thought it the interest of the country to enable the first Governor to appoint the second set of judges. If not properly qualified, two-thirds of the Senate would be sure not to confirm the nominations.

The amendment was rejected; and the 6th section adopted.

In the 8th section, Mr. President Rusk moved to amend that part in brackets so as to read "not less than seven counties" Rejected.

Mr. Rusk moved to amend, so as to read "not less than six nor more than twelve." At the suggestion of Mr. Baylor, he added "except in case the District shall contain a city with a population of 5000"

Mr. Evans offered an amendment providing that districts should be so arranged as to oblige each judge so far as possible to be engaged in the discharge of his official duties for ten months in the year. Rejected.

Mr. Darnell moved to strike out "5000" and insert "10,000." Rejected.

Mr. Cunningham moved to insert "or town." Rejected.

The amendment offered by Mr. Rusk was rejected.

Mr. Young moved to strike out "reside in the same," and insert "shall at the time of his appointment be a resident citizen of the district, and continue such during his continuance in office" Rejected.

In the 9th section, Mr. Cunningham moved to fill the first blank with "two thousand;" Lost, and both blanks were filled with "fifteen hundred."

Mr. Rusk moved to insert "increased, or". Adopted.

On motion of Mr. Howard, the Committee rose, reported progress and asked leave to sit again. Report adopted, and on motion of Mr. Gage, the Convention adjourned until half past 8 o'clock, Monday morning.

Monday, July 28th, 1845.

Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with Prayer by the Chaplain.

The committee on the "Bill of Rights and General Provisions of the Constitution," to whom the report was re-referred, made the following report:

Committee Room, July 26th, 1845.

To the Hon. THOMAS J. RUSK,
President of the Convention:

The committee, to whom was referred the Bill of Rights, have examined the same, with such amendments as have been incorporated by the committee of the whole, have had the same under consideration, and instructed me to report the same back to the Convention, and recommend the adoption of the following verbal amendments, viz: strike out the word "that," where it occurs 1st line, 1st section; in line 2d, 2d section; in lines 5th and 6th, in section 4th

[Signed] ISAAC VAN ZANDT,

Chairman of the Committee on B. of R. and G. P.

Which report was laid on the table, to come up among the orders of the day.

Mr. Burroughs offered the following rule:

Resolved. That the President of the Convention shall first enquire if the Convention is ready for the question—if ready, he shall fairly put the question; after which there shall be no debate on that question: this rule shall apply to the committee of the whole.

Which was laid on the table one day, for consideration.

On motion of Mr. Wood, the Convention took up the

ORDERS OF THE DAY.

On motion of Mr Mayfield, the Convention resolved itself into committee of the whole, on the report of the Judiciary Committee, Mr. Mayfield in the chair.

In the 9th section, Mr. Holland moved to strike out "less" and insert "more." Lost.

Mr. Jewett offered an addition sectional providing for the Impeachment of judges, which was adopted.

Mr. Evans proposed an addition to the 10th section, providing that juries shall assess the fines imposed in criminal cases, and the amount of punishment, except in capital cases. Adopted.

In the 11th section, Mr. Henderson moved to strike out "amounts to" and insert "exceeds." Adopted.

Mr. Lewis moved to strike out "one hundred" and insert "fifty." Lost.

Mr. Scott moved to strike out "one hundred," and insert "two hundred," as he was in favor of speedy justice. Lost.

Mr. Davis offered a substitute for the 12th section, providing for the election of the Attorney General and District Attorneys by joint vote of both Houses, for two years Adopted.

Mr. Henderson moved to strike out "two" and insert "four" for the Attorney General. Lost.

Mr Ochiltree proposed to add that their duties, salaries, and perquisites shall be prescribed by law. Adopted.

In the 13th section, Mr. Davis offered an amendment: "the sheriff shall not be eligible for more than four years in every six." Adopted.

Mr Hemphill proposed an additional section to come in between the 11th and 12th providing for the election of a clerk of the District Court, by the qualified voters of the county, to hold his office for four years.

Mr. *Forbes* moved to strike out "elected by qualified voters," and insert "appointed by the judge." He had seen the bad operation of the election of officers of that character by the people; and so far from the people caring about it, he was very well convinced that they would rather have this privilege taken from them. He had seen records made out in some counties, which it was almost impossible to decypher.

Mr. *Darnell* said that the people of his county want to elect their clerks; they want no appointment. But if the gentleman choose to make such a provision for his own county, he had no objection.

Mr. *Forbes* said he believed the people of Texas generally were in favor of that mode; he believed they would be perfectly satisfied with any arrangement which would conduce to the public good.

Mr. *Ochiltree* said he agreed with the gentleman that there were some very hard cases now in some parts of the country among the district clerks. He thought, however, that three or four heavy fines would bring them up standing, or oblige them to get deputies who are qualified. He should dislike very much to see the right to elect them taken from the people.

Mr. Forbes' amendment was rejected.

Mr. Woods moved to strike out "four" and insert "two" for the term of office. If incompetent he was not likely to be elected again: if competent, he probably could be. It seemed to him that no inconvenience could arise from the amendment.

Rejected; and the additional section adopted.

In the 14th section, Mr. Lipscomb moved to strike out the word "them," to the word "case," and insert the following: "When the Supreme Court, or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, or when no judgment can be rendered in any case or cases in said court, by reason of the division, in opinion, of said judges, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of said case or cases." The word "equal" was inserted before "division," at the suggestion of Mr. Baylor, and the amendment was adopted.

Mr. Wright moved to insert "directly or indirectly," before "interested." Lost

In the 15th section, Mr. Howard moved to strike out all after the word "estates," leaving the regulation of inferior courts to the Legislature. Stricken out.

Mr. Hemphill moved to add, "and the district courts shall have such jurisdiction over said inferior tribunals, and over executors, administrators, guardians, and minors, as shall be prescribed by law."

Mr. *Brown* proposed a substitute for the whole section and the amendment, the object of which was to give the probate court exclusive original jurisdiction, and let errors be rectified by the district courts. The substitute was rejected; and the amendment of Mr. Hemphill adopted.

Mr. *Ochiltree* thought the whole section superfluous, as its objects were amply provided for in the first section. He moved to strike out the 15th section as amended.

Mr. *Jewett* was opposed to striking out: the first section says *may* establish. this makes it imperative upon the Legislature to establish these inferior courts

Mr. *Van Zandt* said: If the 15th section is stricken out, the effect will be, that the present probate system will be fastened upon us perhaps for years to come If he had ever witnessed any system calculated for carrying on frauds, it was the probate court system. He believed in some counties the fees of lawyers in that court are greater than the amount which the estates are worth.

Mr. *Ochiltree* said, that in this country there had been in these courts the foulest management he had ever known But he did not see how that section could remedy it at all. The Legislature, at last, will have to prescribe what sort of courts we shall have, and under what rules and regulations.

Mr. *Cunningham* was opposed to striking out. He thought the section very imperfect. but he wished it to be kept in the report, in order that the whole matter might be again referred.

The committee refused to strike out; and the section as amended was adopted.

Mr. Love proposed an additional section "In all actions pending in the district courts, whether in law or equity, either party, upon application, shall have the right of trial by jury; in all actions arising out of a contract, before any inferior tribunal, where the amount in controversy shall exceed ——— dollars, either party upon application shall have the right of trial by jury; and in all cases where a Justice of the Peace or other judicial officer of inferior tribunals shall have the right to fine or imprison for any violation of a penal statute, the accused shall have the right of trial by jury."

Mr. *Howard* said: that this would effect a very important change in chancery practice. The rule is, that the chancellor, if he chooses, may determine every thing in a case: if he sends it to the jury, it is merely to enlighten his own conscience.

Would you shut twelve men up in a room to examine a complicated account which had been running for twenty years? It would strike him that a jury trial of that sort would amount to a denial of justice. It was to put a jury at a matter for which they are entirely incompetent. There are other cases where it is not desirable. Take cases of fraud, which have elicited a great deal of public feeling. It would be impossible to find a jury who had not made up their minds. He thought the rule in chancery wise and salutary, following the practice in England, in New York, and other States which have retained one court at least where slang-whang is not the rule of decision.

Mr. *Love* said: In Virginia and Kentucky, as a point of practice, it is not very usual to have juries in chancery trials; but in many cases they are applied for, and in many desired by the judges. In those complicated cases, the mode of practice is to refer them to an auditor, who is subsequently examined in court. The jury will understand the nature of accounts as well as the court. For his own part, he would as soon trust a complicated chancery case to a jury as to a judge. Nine times out of ten, juries are found more disposed to do justice than the chancellor. If the jury do wrong, there is a remedy by new trial and appeal. He thought it the best way under our system to decide all cases.

Mr. President *Rusk* said: It might be true that some inconveniences might arise from the adoption of this proposition; no very great evil, however, could result. The right of trial by jury is asserted in our constitution; it is considered both in the English and the American law as an inviolable right. It would seem that it should be extended to all cases of public importance. Next to doing public justice, says a distinguished law writer, giving general satisfaction is an important object. It strengthens the hands of those who administer the law, and gives it a stronger hold upon the affections of the people. It is a dangerous principle to trust too much power in the hands of one man. Would it not be better to trust a power of this nature in the hands of twelve men, than to confide it to the breast of one? By adopting this, you do not take away the responsibility of the judge himself. He has not less the control of the case: when it goes before the jury he can deliver his opinions of the law, and the rule of decision. Parties will go away much better satisfied than if the decision depended upon a single judge; and it will have a good effect so far as the substance and support of the tribunals are concerned.

Mr. *Howard* said: He did not consider general satisfaction as the sole and entire object of courts of justice. Pontius Pilate gave very general satisfaction when he crucified Jesus Christ. But it did not follow that he was right. Right is the matter to be looked at; it should be the object of courts of justice to secure right, though against the popular feeling and interest. When a man is accused of great crimes, popular feeling is generally strong against him; we are not, however, because it may satisfy the craving of a vitiated public appetite, to hang him. Give independence to the judiciary of the country; and they will do right, and be deaf to public clamors To say that public opinion is always right, is a stretch of opinion to which he should never go, whether here or elsewhere. He was in favor of innovating so far as is necessary to secure human right, but did not wish to sacrifice a great principle established for centuries to mere abstract notions.

Mr. *Love* thought the gentleman had made a good speech against the right of trial by jury in all cases. When the chancellor himself undertakes to investigate cases of the class before alluded to, ninety nine times out of a hundred he takes the report of the master in chancery, unless objections are made, as true. He thought it a better and safer remedy to go to the jury in these cases. He had noticed in his practice that a common-sense and intelligent jury could unravel them better than the judge, because it is not his business; and every man of them is familiar with accounts; and they almost always decide a case in the manner it ought to be decided You will often hear litigants cursing judges for improper decisions; but very seldom if they have had a jury. In that case they go home, at least satisfied that they have had a fair chance. The system which he proposed is pursued in Pennsylvania, Virginia, and Kentucky; how many other states he did not know; and he had never heard any complaint with regard to its operation.

Mr. *Henderson* said: He was opposed to the proposition, because it is innovating upon well established principles, and the situation of the country does not require it. And he thought the gentleman from Galveston would be hard run to find precedents in support of his position. He was in favor of retaining this power in the judge; because he is learned in the principles of equity, and able at all times to apply the same rules to each case. If you give it to the jury, in most cases they will be operated upon by prejudices connected with the particular case; they will be in favor of one individual and against the other It would take away the power of enforcing the rules of equity alike in all cases a jury would decide different cases in a different way; whilst the judge, who knows the law, is bound to administer it in the same way at all times.

On motion of Mr Moore, the committee rose, reported progress, and asked leave to sit again. Report adopted.

On motion of Mr. Howard, Mr. Kinney was added to the committee, to whom was referred the subject of the apportionment of representation, and taking the census.

The Convention adjourned until 4 o'clock, P M.

4 o'clock, P M.

The Convention met pursuant to adjournment, and went into committee of the whole on the report of the committee on the judiciary department, Mr. Scott in the chair.

The additional section of Mr. Love under consideration.

Mr. *Armstrong* said: I hope the committee will consider well before they adopt that section, which I think will operate very injuriously. I think the trial by jury one of our most valuable institutions, when properly applied; but the best and noblest institutions may be perverted to the worst of purposes. We might as well authorize the jury to sign the minutes and punish the judge for contempt. I am astonished to see gentlemen who have so stoutly maintained the independence of the judiciary, now disposed to give every thing to the jury, and leave the court naked and impotent, a mere shadow, an individual mounted upon a bench for the jury to laugh at The proposition amounts to nothing more nor less than to strip the court of every prerogative, and give to the jury the law, equity, and facts, to do as they please. It would be better, in my opinion, to leave it to the legislature to apply these things; it is enough for us to say in the constitution that the trial by jury shall be preserved inviolate. If we intend the jury to determine every thing, it would be better to dispense with the judge altogether, as a useless appendage of the court.

Mr. *Moore* was in favor of authorizing a jury to be impannelled by a justice of the peace, in order to decide important questions which often arise before the justices of the peace. He thought a great deal of expense would be saved to the state, if assault and battery cases could be decided by a jury impannelled by a justice of the peace. They frequently occupy the district courts during a large share of the session; and a great portion of the expense of witnesses and juries is thrown upon the county or state. He thought that nothing which could be adopted would tend more to elevate the morals and character of the people, than to give justices of the peace the control over these petty offences.

Mr. *Lipscomb* proposed to add the words "where matters of fact are to be inquired into" That would leave matters of fact to go to the jury, and matters of law where they should go, to the judge.

Mr. *Love* said. There is certainly some misconception on the part of some gentlemen with regard to the amendment It is nothing more nor less than giving justices the same power which they have in common law practice; nothing more than to give the decision of a case to the jury under the instruction of the court. It is not an innovation as far as the practice in many states is concerned It has prevailed in Kentucky from its organization up to this day; and there has never been a single proposition made in the legislature, to take that power from the jury. In point of practice it is not frequently resorted to; very rarely indeed, unless from existing circumstances, one or other of the parties is induced to believe that entire justice will not be done by the judge. They cannot refuse a judge, unless interested in the event of the action. But there are many cases where a direct interest cannot be fixed upon the judge, and yet circumstances, the influence of families, and others, may produce in the minds of litigants a belief that entire justice will not be done them by him I shall object to the addition to my section. What injury can arise from leaving the jury to determine according to the law and the evidence before them, any more than in complicated common law cases? Under the existing system, every possible thing almost that can occur in the trial of a cause in chancery, does arise in that of a common law cause.

With regard to the other portion of the section touched upon by the gentleman from Harris, I will make one or two remarks. When a fight takes place in the streets in Kentucky, the parties are taken before a justice of the peace, tried and fined, and there is an end of it. By the practice in Texas, they are brought before the district court, and the costs they have to pay are twenty times as much as the justice of the peace would exact. This system has worked well in Kentucky, with regard to the morals of the country.

Mr. *Ochiltree* said: That with regard to the latter clause of the section, he agreed with the gentleman from Galveston. And if it is consistent with the bill of rights, he should like to see it adopted. But he doubted whether it would be competent for justices of the peace to try summarily cases of assault and battery, whilst we declare in the bill of rights that all prosecutions shall be by indictment or information. He would like to see the justices of the peace have that jurisdiction.

Mr. Lipscomb's amendment was rejected.

Mr. *Hemphill* said: I cannot say that I am very much in favor of either chancery or the common law system I should much have preferred the civil law to have continued in force for years to come. But inasmuch as the chancery system, together with the common law, has been saddled upon us, the question is now, whether we shall keep up the chancery system or blend them altogether. If we intend to keep it up as it is known to the courts of England, the United States, and many of the states, and United States courts will be established here, we should oppose this innovation; for I do not know any alteration which could be a greater innovation, than to subject all chancery cases to a trial by jury It is well known that the trial by jury has been esteemed as highly in England, whence we derive it, as in any country in the world. A great deal of blood has been shed to preserve it; but I have never known or heard that it was ever thought of, to extend it to cases in equity, admiralty, or the ecclesiastical, what we call the probate court. It was never supposed that justice or right could be dispensed in these courts by the trial by jury All our notions of the trial by jury and its benefits are drawn from England; yet there we find, that in courts of equity, admiralty, maritime jurisdiction, or the ecclesiastical courts, such a thing was never heard of In practice, it is sometimes the case, that the judge directs issues of fact to be tried by a jury, when the verdict is sent up to him; it is possible that he will disregard the verdict of the jury, but almost always he recognizes and proceeds upon the finding. If we now introduce the trial by jury into the chancery system of this country, let us suppose a case by which the Convention will see its operation Suppose the district court to have jurisdiction over all settlements of accounts in successions; suppose one to be settled of twenty years' standing, and that the administrator is called to account for his management of the estate. He is obliged to produce his accounts year by year, and item by item; he must produce his vouchers, and all the evidence necessary to prove them The next question is, was this a proper account? And in the discussion all the doctrines relating to community, to partnership property, to the relation of husband and wife, necessarily arise; all the laws affecting these matters, whether those of Spain, Mexico, Coahuila, or Texas, or our own laws, before the introduction of the common law, must be produced. Many cases come up before a chancery court in which there is no necessity for a jury; as in the division of an estate, where one heir files a bill in chancery calling upon another to answer, why it should not be divided I cannot see how a jury could possibly be introduced in a case of that kind. If you take ecclesiastical or probate cases, I cannot see any necessity for the introduction of a jury. In granting letters testamentary, or taking the probate of a will, and many other cases, I see no such necessity. I still think there is some objection to the chancery practice, as it exists in England and many of the United States. There are some cases in chancery where a jury might be advantageous, as, for instance, where a suit is brought to recover a lost note, or in questions relating to the making of a will, whether it was made as alleged in the will, whether the testator, at the time of signing, was in his right mind or not, and so on; because the jury will know the witnesses, and all the persons interested, and give the testimony its proper weight. I should like to see the matter accommodated in some way. I think the amendment of the gentleman from Washington, which has been rejected, is perhaps a proper one. I will only suggest, that when the United States courts shall be established here, the practice in those courts will be that which is known to the common law of England, without innovation, so far as chancery is concerned.

Mr. *Davis* said: The gentleman who has just addressed the committee seems to find his principal objection in cases involving the settlement of accounts. Now, it will be recollected, that the amendment provides for a jury only in cases where it is desired by either party. In cases where it is not necessary, it is not probable that either party will desire it. I will ask gentlemen who know any thing of chancery, if the settlement of accounts is not a very small part of the business which comes into chancery? But would there be anything improper in bringing accounts before a jury? I see no great difficulty in the matter. The accounts are prepared and classified, and submitted to the jury under the charge of the court. And in all probability there would not be one case in fifty, where accounts are to be settled, in which either party will ask for a jury. We are told that by the adoption of this proposition, we strip the judge of every prerogative; that it is then not necessary to have a judge, but only to impannel a jury. But I would ask, if a jury is competent to determine the facts in common law cases, if it is not equally so in cases of equity? I must acknowledge that I do not pretend to any extensive information as a jurist. But I will say, that I have never yet seen the good sense of dividing cases, and establishing courts of equity. I have never seen any reason why all cases should not be tried in a court of law upon equity principles. Gentlemen call this an *innovation. Sir, if our fathers had not innovated*, where would our present government have been? I ask legal gentlemen to say if the common law has not been innovated upon in England and the United States? We profit by experience; and no people will ever make any improvements of any character whatever, if they confine themselves to established principles. The immense improvements made in government and every thing else are the consequence of *innovation*. I *maintain* the opinion that the reason why the system proposed by the gentleman from Galveston, has not been adopted in most of the states, is to be found in this very fear of innovation.

Mr President *Rusk* said: The object, Mr. Chairman, of all investigation in courts of justice, is to arrive at facts and do justice between parties. Then that method which is the most certain, the most speedy, and the least expensive, is the best that we can adopt. Gentlemen who are so much alarmed at the idea of innovation, have confined themselves in their arguments to two single objections: one, that a jury, being stupid or asleep, would be totally incapable of determining upon the justice of accounts; and the other, that a jury is not as competent to determine a question of fraud, as a judge upon the bench. These are all the arguments adduced against this great encroachment. I do not look upon it as a great encroachment, but if it is, as it has been remarked, that the court of chancery originally stole all its jurisdiction from the courts of common law, I think it nothing but right and proper and a fair retaliation, for this Convention to restore it. Gentlemen also tell you that it is better to leave the matter entirely to future legislation; that you are wading in deep water, and establishing principles here, the operation of which you cannot understand. Now, sir, the legislature has brought all things into confusion. Immediately after the revolution it was determined that one court should have jurisdiction over all cases, rejecting the useless distinction between law and equity, which has since grown up. And I believe, when properly investigated, in the light of time and experience, that this system will be found the best, the plainest, the cheapest, and most free from objections of any, and that it will arrive at the end, the administration of justice, better than any other. But the legislature has introduced this useless distinction between courts of law and those of equity. Past experience convinces me that the legislature, in place of making matters of this nature plain, will but make them the more confused. I have been thrown into the position, with gentlemen who support this measure, of seeking to make a great innovation. I will repeat the remark from Blackstone, that next to doing right, the great object is to give general satisfaction. I think it a just one now, and that it will be correct throughout all time. When cases are to be decided, the eternal principles of right and wrong are to be first considered, and the next object is to give general satisfaction in the community. For if once you array the judiciary against the people, you do not add to the independence of the former, but you produce a direct collision, in which the judiciary must inevitably suffer. It is said that a jury is incompetent to decide in the settlement of accounts of twenty years' standing. Now, if we do not adopt some plan by which accounts will be settled before the expiration of twenty years, it will be of no use to go into courts of equity, because it would consume the estate. It ought to be the object to bring about short settlements, so that no accounts should be to be settled of twenty or thirty years back, when the witnesses might be dead, and the circumstances forgotten, and it might be impossible to administer justice. It has been said that a jury is totally incompetent to determine in matters of fraud. I cannot see this; it seems to me that the reverse is the case. The chancellor is engaged in various other matters; his mind is taken up with a multitude of duties; he is not acquainted with the neighborhood and the circumstances connected with the transactions; he is not in the habit of reasoning upon the conduct of men in such situations to any great extent. The jury judge by the countenance of a witness, whether he speaks the truth and to what extent; and they are better acquainted with the circumstances. The arguments which would go against a section of this kind, go against the right of trial by jury at all. They proceed upon the ground, that juries are incompetent to discharge the duties submied to them by the law. Now, if they are incompetent in cases of equity they are equally so in suits at law. But is it in accordance with reason, that twelve men should be less competent to detect fraud, or to determine a matter of accounts between man and man, than one? And if a man's case is submitted to the jury before the court, whose duty it is to charge the law, and the twelve men determine against him, he does not go away abusing the organs of the law; he comes to the conclusion that he is in the wrong. Whereas, if one man sits and judges the entire matter, because it is a case in equity, I will venture the assertion, that nine times out of ten he will go away dissatisfied.

The amendment was adopted as an additional section.

Mr. *Armstrong* offered an amendment, providing for the election by qualified voters, of a Board of County Commissioners in each county. Rejected.

On motion of Mr. Parker, the committee rose, reported various amendments, and asked leave to be discharged from the further consideration of the Report. Report adopted.

On motion of Mr. Van Zandt, the report of the Committee on the Judiciary Department was laid on the table, for the present.

Mr. Van Zandt, chairman of the Committee on the Bill of Rights and General Provisions of the Constitution, made the following report:

Committee Room,
July 28th, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The committee, to whom was referred the "General Provisions of the Constitution," and sundry resolutions in relation thereto, have had the same under consideration, and have instructed me to report the following provisions, and respectfully recommend their adoption.

ISAAC VAN ZANDT,
Chairman of Com. on B. of R. and G. P.

GENERAL PROVISIONS.

Sec. 1. Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation:—' I (A B) do solemnly swear, (or affirm) that I will faithfully and impartially discharge and perform all the duties incumbent on me as , according to the best of my abilities and understanding, agreeably to the Constitution and Laws of the United States, and of this State; and I do further solemnly swear, (or affirm) since the adoption of this Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it; nor have I sent or accepted a challenge to fight a duel with deadly weapons; nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person thus offending—so help me God"

Sec. 2. Treason against this State, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Sec. 3. Every person shall be disqualified from holding any office of trust or profit in this State, who shall have been convicted of having given, or offered, a bribe to procure his election or appointment.

Sec. 4 Laws shall be made to exclude from office, and from the right of suffrage, those who shall, hereafter, be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported, by laws regulating elections; and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper practice.

Sec. 5. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it; or who shall act as second, or knowingly aid and assist, in any manner, those thus offending, shall be deprived of holding any office of trust or profit under this State.

Sec. 6. In all elections by the people, the vote shall be by ballot, until the Legislature shall otherwise direct; and in all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given *viva voce*—except in the election of their officers.

Sec. 7 No money shall be drawn from the treasury, but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years. A regular statement and account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law

Sec. 8 All civil officers for the State at large, shall reside within the State; and all district or county officers within their districts or counties; and shall keep their offices at such places therein, as may be required by law; and no person shall be elected or appointed to any county office, who shall not have resided in such county long enough before such election or appointment, to have acquired the right of voting in such county; and no person shall be elected or appointed to a district office, who shall not have resided in such district long enough before such appointment or election to have acquired the right of voting for the same.

Sec. 9. The duration of all offices not fixed by the Constitution, shall never exceed four years.

Sec 10 Absence on the business of this State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office, under the exceptions contained in this Constitution.

Sec. 11. The Legislature shall have power to provide, by law, for deductions from the salaries of public officers, who may be guilty of a neglect of duty.

Sec. 12. The Legislature may point out the manner in which a person coming into this State shall declare his residence.

Sec. 13. No member of Congress, nor person holding or exercising any office of profit or trust under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this state.

Sec. 14 The Legislature shall direct by law, how persons who are now, or may hereafter become, sureties for public officers, may be discharged from such suretyship.

Sec. 15. The Legislature shall provide by law, for a change of *venue*, in civil and criminal cases.

Sec. 16 It shall be the duty of the Legislature, to pass such laws as may be necessary and proper, to decide differences by arbitration.

Sec. 17. No lottery shall be authorized by this State; and the buying or selling of lottery tickets, within this State, is prohibited.

Sec. 18 No divorce shall be granted by the Legislature.

Sec. 19 It shall be the duty of the Legislature, as early as possible, to pass laws defining the rights of married women, upon a principle of community of property between husband and wife, having a due regard to the rights of heirs and creditors.

Sec. 20. The Legislature shall have power to pass laws prohibiting, under such modifications as they may think proper, the separation of the families of slaves by private or public sale.

Sec. 21. The rights of property, and of action, which have been acquired under the constitution and laws of the Republic of Texas, shall not be divested; nor shall any rights or actions which have been divested, barred, or declared null and void, by the Constitution and laws of the Republic of Texas, be re-invested, revived, or re-instated, by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution.

Sec. 22. All colonization contracts, for settling the vacant and unappropriated lands of the Republic of Texas, heretofore made with the President thereof, shall be suspended, and cease from and after the adoption of this Constitution by the people of Texas; but the rights to lands, of actual settlers already introduced in conformity with the terms of the contracts, are, hereby guaranteed; and the Legislature shall have the power to pass laws necessary for maintaining the same; and laws to enable the contractors (who entered into the contract with the

President) to institute suits against the State, for the recovery of any indemnity to which they may be equitably entitled.

Sec 23. The Legislature shall have power to protect, by law, from forced sale, a certain portion of the property of all heads of families, and in all cases, the homestead of a family, not to exceed 160 acres of land, shall be exempt from sale by execution.

Sec. 24 The Legislature shall provide by law, in what cases officers shall continue to perform the duties of their offices, until their successors shall have been inducted into office.

Sec 25. Every law enacted by the Legislature, shall embrace but one object, and that shall be expressed in the title.

Sec 26 No law shall be revised or amended, by reference to its title; but in such case, the act revised, or section amended, shall be re-enacted, and published at length

Sec. 27. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace.

Sec. 28 Taxation shall be equal and uniform, throughout the State. All property on which taxes may be levied, in this State, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of property of equal value, on which taxes shall be levied. The Legislature shall have power to lay an income tax; and to tax all persons pursuing any occupation, trade, or profession.

Sec. 29 No corporate body shall, hereafter, be created, renewed, or extended, with banking or discounting privileges.

Sec. 30 Corporations shall not be created in this State, by special laws, except for political or municipal purposes; but the Legislature shall provide, by general laws, for the organization of all other corporations, except corporations with banking or discounting privileges, the creation of which is prohibited.

Sec 31. No corporation, hereafter to be created, shall ever endure for a longer term than ——— years, except those which are political or municipal; and two thirds of the Legislature shall have the power to revoke and repeal all private corporations, by making compensation for the franchise.

Sec. 32 The aggregate amount of debts hereafter contracted by the Legislature, shall never exceed the sum of one hundred thousand dollars, except in case of war, to repel invasions, or suppress insurrections, unless the same be authorized by some law, for some single object or work, to be distinctly specified therein; which law shall provide ways and means, by taxation, for the payment of running interest during the whole time for which said debt shall be contracted, and for the full and punctual discharge, at maturity, of the capital borrowed; and said law shall be irrepealable until principle and interest are fully paid and discharged; and shall not be put in execution until after its enactment by the first Legislature ratified by a general election, after its passage

Sec 33 No new county shall be established by the Legislature, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as part of the county or counties from which it was taken, until entitled, by numbers, to the right of separate representation.

Sec. 34 The Legislature shall have power to extend this Constitution, and the jurisdiction of this State, over any territory acquired by compact with any state, or with the United States. The same being done with the consent of the United States.

Sec, 35. Any amendment or amendments to this Constitution, may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of two thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on the journal, with the yeas and nays thereon; and the Governor of the State shall have the said amendment or amendments published in all the newspapers printed in this State, at least three months previous to the next general election to be held for representatives in said State; and shall order the returning officers to open polls for said amendment or amendments, and return the same to the Secretary of State, in the same manner as other election returns are made, who shall deliver said returns to the Speaker of the House of Representatives, and they shall be opened and counted in the presence of both Houses of the Legislature; and if the majority of the electors shall have voted for said amendment or amendments, then the Legislature shall declare the said amendment or amendments to be a part of this Constitution, and incorporate the same accordingly.

IMPEACHMENT.

Sec. 1. The power of impeachment shall be vested in the House of Representatives.

Sec. 2. Impeachments of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and of the Judges of the District Courts, shall be tried by the Senate. The Chief Justice of the Supreme Court, or the Senior Judge thereof, shall preside during the trial of said impeachment

Sec. 3 Impeachments of Judges of the Supreme Court, shall be tried by the Senate. When sitting as a court of impeachment, the senators shall be upon oath or affirmation; and no person shall be convicted, without the concurrence of two-thirds of the senators present.

Sec. 4. Judgment, in cases of impeachment, shall extend only to removal from office, and disqualification from holding any office of honor, trust, or profit, under this State; but the parties convicted shall, nevertheless, be subject to indictment, trial, and punishment, according to law.

Sec. 5. All officers against whom articles of impeachment may be preferred, shall be suspended from the exercise of their functions, during the pendency of such impeachment; the appointing power may make a provisional appointment to replace any suspended officer, until the decision on the impeachment.

Sec. 6 The Legislature shall provide, by law, for the trial, punishment, and removal from office, of all other officers of the State, by indictment, or otherwise.

SCHEDULE.

Sec. 1. That no inconvenience may arise, from a change of separate national government to a permanent state government, it is declared that all process which shall be issued in the name of the Republic of Texas, prior to the —— day of ——— next, shall be as valid as if issued in the name of the State of Texas.

Sec. 2. The validity of all bonds and recognizances, executed to the President of the Republic of Texas, shall not be impaired by the change of government, but may be sued for, and recovered, in the name of the Governor of the State of Texas, and his successors in office; and all criminal prosecutions, or penal actions, which shall have arisen, or may arise, prior to the —— day of ———, or which may be pending within the limits of this State, on the —— day of ———, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution, in the name of said State. All suits at law and equity, which may be depending in any of the courts of the Republic of Texas, on the —— day of ———, shall be transferred to the proper court of the State, which shall have jurisdiction of the subject matter thereof

Sec. 3. All laws, and parts of laws, now in force in the Republic of Texas, which are not repugnant to the provisions of this Constitution, shall continue and remain in force, as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the Legislature thereof.

Sec. 4 All fines, penalties, forfeitures, and escheats, which have accrued to the Republic of Texas, under the Constitution and laws, shall accrue to the State of Texas; and the Legislature shall, by law, provide a method for determining what lands may have been forfeited or escheated.

Sec 5 All officers, civil and military, now holding commissions under the authority of the Republic of Texas, shall continue to hold and exercise their respective offices, under the authority of this State, until they shall be suspended under the authority of this Constitution.

Which report was read; and, on motion of Mr. Cazneau, 500 copies were ordered to be printed.

Mr. Van Zandt, chairman of the Committee on General provisions, reported back to the Convention, sundry resolutions which had been referred to said committee, and recommended the same to be laid on the table; which report was adopted

On motion of Mr Caldwell, the Convention adjourned until half past 8 o'clock, to-morrow morning.

Tuesday, July 29th, 1845.

The Convention met pursuant to adjournment, and was opened with Prayer by the Chaplain, as follows:

O, thou, who gavest breath to nature, and life to man, grant us this morning, that which we cannot have by nature, grace, that we may serve thee to divine acceptance. We pray thee this morning, oh, Lord, to prepare us for each and every event that awaits us in future life. With sentiments of gratification upon our hearts for the mercies and blessings which thou hast vouchsafed to us. Guide us by thy councils this day: grant that the words of our mouth, and the meditations of our hearts may be acceptable in thy sight, oh, Lord, our strength and our Redeemer. Let thy blessings rest upon this convention; preside over their deliberations, that all they do may redound to thy glory Grant, we pray thee, relief to the oppressed, and succor to the tempted Prepare the dying for a glorious immortality at thy right hand; and qualify the living to live to thy honor and glory Remember all we should pray for every where; bless the means of thy appointment, the ministry of thy word. Do more for us, we entreat thee, than we are able to ask, or worthy to receive. And, finally, save us with thy everlasting salvation; through Christ, our Redeemer, Amen.

Mr. Runnels offered the following resolution:

Resolved, That the committee on General Provisions of the Constitution, be instructed to enquire into the expediency and propriety of incorporating in the Constitution, the following provisions:

SLAVES.

1st. The Legislature shall have no power to pass laws for the emancipation of slaves, without the consent of their owners. or without paying their owners previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants of this State from bringing with them, such persons as are deemed slaves, by the laws of any one of the

United States, so long as any person of the same age and description shall be continued in slavery, by the laws of this State: Provided, that such person or slave be the *bona fide* property of such immigrants; and, provided, also, that laws may be passed to prohibit the introduction, into this State, of slaves who have committed high crimes in other states or territories. They shall have full power to oblige the owners of slaves, to treat them with humanity; to provide for them necessary food and clothing; to abstain from all cruelties to them; and in case of their neglect or refusal to comply with the requisitions of such laws, to provide, by law, for the sale of such slave or slaves, for the benefit of the owner or owners.

2d. In the prosecution of slaves, for crimes of higher grade that *petit larceny*, the Legislature shall have no power to deprive them of an impartial trial, by a petit jury.

3d. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted, in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

On motion of Mr. Van Zandt, the rule requiring the resolution to lay on the table one day for consideration, was suspended, and the resolution adopted.

Mr. Horton offered the following resolution:

Resolved, That this Convention, in behalf of the people of Texas, tender to the Hon. Robert J. Walker, their profound consideration and gratitude for the great and untiring services he has rendered them, as one of their earliest, best and most efficient friends, in procuring the recognition of their independence, and consummating the great and glorious work of annexation.

On motion of Mr. Van Zandt, the rule requiring the resolution to lie on the table one day for consideration, was suspended, and the resolution unanimously adopted.

On motion of Mr. Horton, the President and Secretary of the Convention were requested to sign the resolution, and forward the same to the Hon. Robert J. Walker.

On motion of Mr. Parker, the Convention took up the

ORDERS OF THE DAY.

The amendments of the committee of the whole, to the report of the standing committee on the Judiciary Department, being first in order, were taken up.

The amendment of the committee, to the 3d section, is as follows:

After the word "State," in the 2d line, insert "in all civil cases, and in all criminal cases, it shall be competent for any one of the Judges of the Supreme Court to grant a supersedeas, and grant a writ of error, returnable to the said Supreme Court if, in the opinion of the Judge to whom application has been made, error in law has intervened."

Mr. *Baylor* said: I hope the amendment will not be made. It is with great reluctance that I differ in opinion from the experienced gentleman who proposed it. I have great confidence in the soundness of his opinions generally; but in this case, with the best reflection I have been able to bestow upon the amendment, I have been brought to the conclusion that it will work no good effect. If the amendment prevail, the result, as I view it, will be this: as extensive as our country is, with the various districts which will necessarily be laid off by law, in many portions of the country the district judge, in going around his circuit, may have little or no access to authorities. Suppose a case of great moment upon trial: the whole talent of the bar is arrayed on the side of the accused: his attorneys have only to make a great variety of points, and to take their bills of exception: and it would be an extraordinary thing indeed, if the judge, shut out from all lights, did not decide some one of the points wrong. And if he committed a single error, the counsel of the accused would only have to present it to one of the Supreme Judges, and upon inspection of the record, he would be necessarily bound, under the contemplated amendment, to grant a supersedeas and writ of error. This would create delay; it would give the accused many opportunities of escape, and would necessarily produce a great amount of expense to the country. I venture to predict, if the amendment is retained, that in the trial of every criminal cause, a great number of bills of exception will be taken, and whether there be error in the opinion of the court below or not, the application will be made for delay, and if the judge is a humane and good man, he will necessarily put off the execution of the sentence for a sufficient time to ascertain whether there is error or not. It will practically work as a general gaol delivery. In making arrangements of this kind, we must take into consideration the circumstances of the country. There is no country scarcely, which has a good and sufficient jail; and as yet we have no penitentiary in the country. But if the amendment which I shall propose is adopted, the whole matter will be left to the Legislature. As society improves, as jails are built, and the means of confining prisoners provided in the various counties, the Legislature can extend the remedy of appeal in criminal matters.

I do hope the amendment will not prevail; but that the one which I propose will be adopted in its stead.

Mr. Baylor offered the following, as a substitute to the amendment of the committee:

After the word "State," in 2d line, insert "but in criminal cases, with such exceptions, and under such regulations as the Legislature shall make;" which was adopted in lieu of the amendment of the committee.

In the same section, 3d line, after the word "issue," insert the following: "the writ of habeas corpus, and under such regulations as may be prescribed by law, may issue;" which amendment of the committee was adopted.

The amendment of the committee to the 8th section: strike out all in brackets, which is "[and each district shall not contain more than seven counties,]" was adopted.

The amendment of the committee to the 9th section, 4th line, is as follows: insert after the word "be," the words "increased or."

Mr *Mayfield* said: I think the word "increased" ought not to be inserted in that clause. It is contended that the State will be poor, that her revenues will be greatly diminished, in consequence of the change of government, and that we must make the salaries of officers low for a few years. In that opinion perhaps every member of the Convention will concur. They must be made low until such time as the State becomes fully established, until her resources are ascertained, taxation is settled, and the collection of revenues insured. But I believe it is in accordance with the feeling and disposition of every member of this body, that, so soon as the revenues of the State will allow it, the salaries of the judges shall be increased from the minimum proposed. For myself, I am one of those who believe that affording an adequate salary to judicial officers, is one among the guarantees which the people have of their independence of character, as it places them in a great measure beyond the influence of popular commotions. If forced, in some degree, to yield my opinions upon this subject, I can still see no reason why we should deprive the legislature of the country, when its resources increase, from increasing the salaries, and giving those officers something like an adequate compensation for the services they are called upon to render. It is evident that the best talent, virtue and patriotism cannot be obtained upon the bench, if salaries are fixed at too low a standard. In a country like ours, where a man's situation upon the bench is so precarious, and no man can live upon honor alone, you must attach to these offices something substantial, a compensation at least which will place him above want, and above the temptations which the profession holds out to him. You will by that means call to the judicial department of the government men of the best legal talent in the country; men in the full tide of practice, possessed of moral worth, learning and industrious habits necessary to give them reputation, practice and control in their profession. But if you render their compensation small, if you make the salaries of judges merely nominal, you will have the tag rag and bobtail of all professions elevated to judicial stations; you will have neither learning, common integrity, nor independence of character. Those who possess energy, true learning, and the confidence of the country, making as they can much larger sums annually, than the salaries attached to these offices, will not be seduced from the walks of their profession to take a position upon the bench.

I am in favor of leaving out the word "increased." and if, in the opinion of gentlemen, the condition of the country is such, as not to justify higher salaries at present, I wish to leave it in the power of the Legislature to increase them hereafter.

Mr *Davis* said he hoped the amendment would be adopted. He was as much in favor of good salaries for the judges as the gentleman from Fayette, and disposed to give them, so soon as the country should have the ability to do so. If the amendment is adopted, whenever the State of Texas shall be able, it will only be necessary to pass a law increasing salaries *after that time*. Then if the judges are willing to risk a re-election, they can resign and receive the increased salary. He was in hopes it would pass; for he believed that the Legislature would, in all probability, make a law to increase salaries, and thus give us an opportunity of getting rid of those who in all probability, may not be so well qualified, as others who will be elected. If a man has discharged the duties of his office well, he will not be affraid to resign and run again; if not, he will get an ample compensation for the poor, and wretched and miserable service he will render.

Mr *Lusk* said he should vote for the legislature to have the power to increase the salaries of the judges. He thought that men of talent might be induced to take these offices, with the expectation of increased salaries when the resources of the country should render it possible

Mr. *Baylor* said: I have but little to say so far as the salary of judges is concerned: I feel some delicacy upon the subject, and leave it to the good sense of the Convention to fix upon any sum which to their judgment shall seem proper. This very point was debated at great length in the Convention which formed the Constitution of the United States, and after the most mature consideration, with all the light that could be thrown upon the subject, that august assemblage of great men refused to sanction the amendment now proposed by the committee of the whole. Dr Franklin was decidedly opposed to retaining the word "increased;" for, said he, times might change, and what is a fair compensation at one time, might be inadequate at another; he thought it best to leave it to the Legislature, because; he thought, there was not much danger that salaries would ever be increased by that body, to any great extent. The Legislature could pass a law to operate upon all judges who might come into office after its passage And if three or four ambitious men should wish to get in, they might raise the salaries, and no honorable judge would remain in his situation.

I do not think the country has the ability to pay very large salaries. I am disposed to be in favor of moderate salaries in the first instance, because our population is not very great, and our resources are not a [illegible] R[illegible] leave it [illegible] a door open [illegible] the control [illegible] hereafter to the good sense of the Legislature, as soon as possible to secure virtue on the bench, and accomplished and scientific lawyers.

Mr. *Hatfield* said: By adhering to the term "increase," we shall exclude from the judicial bench that class of the profession who are really eminently qualified and entitled to positions of that sort. Because when a position of this kind is offered to a gentleman of the profession, he will make a calculation of dollars and cents; for many hold honors as cheap in this country. Whatever honor, power or dignity it may confer, it will be rejected unless you place before him at the same time an adequate compensation for his labors, or at least as great a compensation as the resources of the country will justify. I will ask gentlemen to look forward in the history of the country, and say whether they can conceive of any time when greater virtue, more talent and decision of character will be required upon the bench, than in the first years succeeding its organization as a State; when the interest of the country will more imperiously demand men of the first legal attainments? When we look around us, we find on all sides exciting questions to be determined; there are questions to be settled yet only mooted; adjudications to be made affecting the tenure by which every citizen holds his property; titles to be settled, upon which perhaps four fifths of the land of the country reposes. This being the case, what inducements do we propose to hold out to secure this great object? You present on the one side the honors of the station, and according to the principles of some, with an uncertain and flimsy tenure, for a term of two or four years, dependent upon the whim of the Legislature or the caprice of the people, and to popular doctrine of rotation in office. It is necessary, Mr. President, that this arm of the government should stand upon an independent footing to administer justice with a true scale and even balance. Now I would ask gentlemen from what branch of the profession they are forcing the country to select the judiciary, when they fix a tenure so uncertain, a term so short, and a salary so low, and depriving the Legislature of the power of increasing it hereafter?

The Legislature, as we learn from the history of the past, has kept up an eternal warfare with the judiciary. At one time it has reduced salaries; at another, districts; at another, changed the time of holding the Supreme Court from a healthy season of the year, sending it to a sickly hole in order to kill off the whole of the judges. Now there were men called to the bench who had not been panders to the appetite of legislative assemblies; but men of character, men who were pointed out by the general voice as qualified for stations of this kind. There were two of these, a Jack and a Morris who were thus compelled in the middle of Summer to leave their districts and homes and travel to the town of Washington, to sit there as members of the Supreme Court.

It is unnecessary to trace the causes of their melancholy decease. As individuals, they had to pay the great debt of nature; but, sir, their loss to the country is another consideration. They are gone; their talents, their integrity, their learning, their decision of character, which adorned every station to which they were elevated, are no longer to be witnessed conferring benefits upon this beautiful and interesting country. There are some among those whom I address who will surely concur with me in the opinion, that such have been the fruits of the system adopted by the Legislature. And it appears to me upon this occasion, that this Convention is called upon peculiarly so to guard the judiciary department, that by no possible contingency shall its elevation of position be intruded upon, or its independent character in the least degree affected. Then let us in the adoption of this Constitution, hold out the very best inducements in our power, to call to the bench of the District as well as the Supreme Courts, the best talent, purity, patriotism, and the highest decision of character which may exist in the country.

Mr. *Lewis* thought all difficulties might be avoided by an amendment which he would propose. He thought the salary proposed was perhaps as much as the country at present will afford. But when we shall have more ability to pay an adequate compensation for the best talents of the country, it will be nothing but right that the salary should be increased.

He would propose this amendment, strike out after the word "during" last line 9th section, and insert "the term for which they shall have been elected." So that at any time after that, the salary may be increased. If elected for four years, they will receive 1500 dollars a year for that time.

The object is to prevent a change during the term, and not during their continuance in office. The judges might then resign, and avail themselves of the increase.

The amendment was rejected.

The question was then taken on the amendment of the committee, which was also rejected, by ayes and noes as follows:

Ayes—Messrs Armstrong of J., Brashear, Burroughs, Bagby, Darnell, Davis, Gage, Hicks, Holland, Irion, Jones, Latimer of R. R., Latimer of L., Lewis, Lumpkin, McGowan, M'Neil, Moore, Parker, Power, Rains, Scott, Smyth and White—24

Noes—Messrs. President, Anderson, Armstrong of R., Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Evans, Everts, Forbes, Henderson, Hogg, Horton, Howard, Hunter, Jewett, Kinney, Love, Lusk, Lipscomb, Mayfield, Miller, Runnels, Standifer, Tarrant, Van Zandt, Wright and Young—31

The amendment of the committee, to the 9th section, to fill the first blank with "$1500," was taken up.

Mr. Howard moved to strike out "$1500," and insert "$2,000," for the Judges of the Supreme Court.

Mr *Forbes* said he should vote for rejecting the amendment, because he really thought the sum of 1500 dollars too small a salary for the judges of the Supreme Court, or even of the District Court. He could not see why these salaries should be less than in the neighboring southern States. He thought we required as much learning, talent, and virtue on the bench, as any of those States, and that the people in every part of Texas were willing to go for adequate salaries.

Mr. *Hogg* said: He believed that any man can live in this community for 1500 dollars a year. It is true that 500 dollars may seem a small amount to many persons, but that additional sum for the judges will make a considerable amount when collected by direct taxation. He was willing to see the district judges receive as large a salary as the judges of the supreme court; he thought perhaps their duties are more laborious.

Mr. *Howard* called for the reading of the Report of the Committee of Finance, as the only practical argument which can be made upon the subject: which was read.

Mr. President *Rusk* addressed the Convention. Mr. *Horton* in the chair. I regret very much, sir, the necessity which seems to be imposed upon me, at this stage of the report, to consume the time, or weary the patience of the Convention; but as I view it we are now engaged in the most important branch of our labors; one which involves to a great extent the present prosperity or the future weal or woe of the people of Texas. I feel no very considerable interest in the arrangement relating to other officers in the various departments of the government They will be under the control of the people; and if we adopt some erroneous plans in relation to them, they may easily be rectified. But if we make one false step here, we are forever gone. I would call the serious attention of the Convention to this matter. I do extremely regret to see a serious disposition manifested upon various occasions, on the part of gentlemen of age and talent, to make something like a war upon the judiciary I look upon it as the sheet anchor of our rights. If we have an intelligent, honest, and correct judiciary, your position is safe; the rights of persons and property are safe If, on the contrary, we have one which is swayed about by popular clamors, you are upon a sea without a compass; your rights of person are not safe; your property is not safe; the reputation of your country is endangered; all is anarchy and confusion. I say that hostility to the judiciary is made manifest, and in various quarters. In regard to the manner of selection strange opinions seem to be entertained and maintained, without calm reasoning or reflection. An assault seems to be made upon the pay to be allowed the judges, upon the time which they shall serve, and all the various ramifications of the bill. There seems to be a serious disposition unfortunately manifested to render the office of judge one of uncertainty in point of tenure, in point of position and compensation. What are the duties which we expect to be discharged by the judges of the district and supreme courts? The country is agitated with various and conflicting claims, affecting, not only personal rights, but the political condition of the country. They are of such a nature, that in the course of their investigation and determination in the tribunals, much confusion, popular clamor, and ill feeling, on various sides, will assuredly be manifested. Should we then have a weak and vacillating judiciary, destitute of talent and integrity, with no merit beyond that of office seekers, who, if they cannot procure an important office will take a small one; if they cannot get good salaries will take small ones? Will you make the term of your judges a very short one, and give them a totally inadequate compensation? Will you subject them to the whim and caprice of popular excitement got up by demagogues traversing the land, circulating misstatements and sowing misconceptions every where? Or, will you make the term of their office respectable, the salary such as will decently and properly support them, and remove them from the influence of popular clamor? If you do this, you may expect to have men of talents and integrity upon the bench. If not; if you make a scramble for these offices, men of integrity and talent will not subject themselves to the evils they would have to encounter for a mere temporary position. To be a good judge a man must be a good lawyer. If he is a man of practical talents and integrity, he will necessarily have a lucrative employment. When the proposition is made to him to go upon the bench, he sits down and reflects that he is acquiring a competent living, without being set up to be shot at by the shafts of envy, malice, and detraction. Will he leave such a position to be on the bench a year or two, with an inadequate salary? Where is the inducement? On the contrary, you will drive such men from these positions, and fill them with men who are not guided by the great principles of justice; men who will be veered about by any particular interest or clamor. When you give an officer some length of time as a term of office, with a salary sufficient to enable him to live comfortably, and place him above the pinchings of want, you make the office responsible, and men of talent and purity of character will undergo its difficulties and risk its inconveniences. They will have, in the first place, a comfortable living, then a position which will last some time, opening the door to establish a name and reputation upon the bench, which will be of advantage in after life. I have thought, during this discussion, that we might derive a lesson from the well known prayer of Agur, in some of the writings of Solomon, "give me neither poverty nor riches." What is the petty sum of five hundred dollars, when you take into consideration the alternative of placing men in office who will be acted upon by corrupt influences, and entrusting to hem your life, your property, and the rights of your children after you? I am in favor of no high salary; but I would not place men upon the bench, and require them to discharge the high and sacred duties of that station, who are incompetent from poverty, and the temptations to dishonesty which poverty carries in its train. I would not trust men there without the strongest guarantees for their intelligence and integrity. And 1500 dollars would not purchase them a library sufficiently extensive to enable them to be prepared for the investigation and determination of the important and interesting questions which will come before them. With these views, I shall vote against the amendment roposed by the committee. If that amendment prevail, I shall look upon your judiciary as gone.

The ayes and noes being called for—

Mr. *Hicks* said: As his vote here would not explain itself, he would give his reasons. He voted for the amendment inserting "increased or." He did that with the view of raising the salary here over 1500 dollars; ut as that failed, and it was made subject to the action of the legislature, he should vote against striking out 1500, believing, however, at the time, that it is not enough.

Mr. *Darnell* said: He had intended to vote for increasing the salaries of judges, and had been prepared to vote for 2000 dollars for the district judges, and 2500 for those of the supreme court. But as the matter was now left entirely between the legislature, the judges and the people, he should vote for rescinding 1500 dollars, leaving it with them to settle hereafter.

Mr. *Forbes* should vote to strike out the amendment of the committee, in order that the blank might be filled up with a larger sum. He would vote for 2000 and 2500. He would do that, with the hope that these salaries might be fixed and permanent; of all things, he abhorred seeing the legislature tamper in any manner with the judiciary; he believed they should be left as far apart as heaven and earth. You cannot make the judiciary independent, if you subject it in any manner to the action of the legislature.

Mr. *Brown* thought the amount of the salary ought to be fixed by the Constitution. He thought 2000 dollars small enough as compensation; and he did not think there should be any distinction between the judges of the district courts and those of the supreme court.

Mr. *Van Zandt* hoped the amendment would not be agreed to. It was unnecessary to enlarge upon the importance of drawing to the bench the highest order of talent in the country. You cannot expect men of age, experience, and learning, to quit a lucrative practice, and engage in the arduous duties of a judicial station, unless you give them a competent support, and pay them something extra. Men who have devoted years of study and of toil to the law, who have snuffed the midnight lamp from their earliest youth, cannot be expected to go upon the bench for a bare support for themselves and their families. You must pay them something more than the amount absolutely necessary to pay them meat and bread, and supply them with the clothes they wear. You must expect to pay them something extra, and this cannot be done with a less amount than 2000 dollars. The Finance Committee, composed of gentlemen well versed in the finances of the country, believe that the amount necessary, at 2000 dollars, may be raised for this purpose. When we proceed to the district judges, he was for making a distinction; he believed 1750 was quite sufficient. In all professions, as in trades and occupations, there are various grades. Though satisfied that the district judges will perform as much physical and perhaps mental labor, still he thought it best to keep up the distinction of grades.

Mr *Jones* said: That he rose, not for the purpose of discussing the subject, but merely to explain his reasons for the vote he was about to give. The section, as it now reads, provides that the legislature may, at its first, or a subsequent session, increase the salaries at pleasure. If it read 1000, and should remain at that, in all probability, before the first quarter's pay was due, the salaries might be increased to 2000 or 2500 dollars. He had voted that they should not be increased or diminished, with the intention of voting for a higher salary, which salary should remain until the term of service should expire; to prevent the legislature from being influenced in this matter by those judges who would be here to tell them how hard it was to live upon their salaries. The feelings of members are liable to be wrought upon by interested individuals, telling them the extreme hardness of their case, and satisfying them that it is within their power to extend the remedy. He was disposed to give salaries sufficient for their support; he was not disposed to be churlish in this respect; but he hoped it would not be placed in the power of the legislature to alter them, for the term for which the judges may be elected. If the section should be made to read, that salaries could not be altered for the term of service, he would then vote for striking out, and for a large salary, perhaps the highest that might be proposed. But, as it now stood, he should vote against striking out, believing that if the motion should prevail, the legislature, at its first session, may be convinced that the amount is too small, and may extend the salary to 3 or 4000 dollars.

Mr. *Jones* called for a division, on striking out "$1500": carried.

Mr. *Mayfield* moved to fill the blank with "$2500."

The ayes and noes were called for, on filling the blank with $2500, which were as follow:

Ayes—Messrs. Darnell, Forbes, Kinney, Mayfield and Tarrant—5.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., [illegible] Brown, Burroughs, Caldwell, [illegible] Hicks, Hogg, Hor- [illegible] Latimer of L., La- [illegible] M'Gowan, [illegible] Runnels, Scott, Smyth, [illegible] Wright and Young—43.

[illegible]

The question was then taken on Mr. Howard's motion, to fill the blank with "$2000," upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Gage, Henderson, Horton, Howard, Holland, Hunter, Jewett Kinney, Love, Lusk, Lipscomb, Mayfield, M'Gowan, M'Neill, Miller, Moore, Power, Runnels, Smyth, Tarrant, Van Zandt, White, Wright and Young—38

Noes—Messrs. Brashear, Burroughs, Bagby, Evans, Hicks, Hogg, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Parker, Rains, Scott and Standifer—16

So the motion was carried and the blank filled with $2000.

In the second blank of the 9th section Mr. Van Zandt moved to strike out "$1500," (the amendment of the committee) as salary for District Judges, upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Armstrong of R. Brown, Caldwell, Cazneau, Clark, Cunningham, Darnell, Evans, Forbes, Henderson, Howard Holland, Jewett, Lusk, Mayfield, M'Gowan, M'Neill, Moore, Tarrant, Van Zandt and Young—22

Noes—Messrs. Anderson, Armstrong of J., Bagby, Bache, Brashear, Burroughs, Davis, Everts Gage, Hicks, Hogg, Hunter, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standifer, White and Wright—28.

So the motion was lost.

Mr. Lusk moved to reconsider the vote rejecting the amendment, prohibiting [illegible] from being increased during their term of service; which motion was laid on the table.

Mr. Darnell moved to reconsider the vote, fixing the salary of the judges of the district courts at $1500; which motion, on motion of Mr. Gage, was laid on the table.

On motion of Mr. Rusk, the report of the Committee on the Judiciary Department was laid on the table for the present; and on motion of Mr. Cazneau, the Convention proceeded to the special order of the the day for twelve o'clock, which was the election of public printer.

Messrs. Field and Cruger and Miner, being in nomination, the Convention proceeded to ballott: and Messrs Miner and Cruger, having received a majority of all the votes, upon the first balloting, were declared duly elected public printers for the Convention.

On motion of Mr. Bache, the Convention adjourned until 4 o'clock P. M.

4 o'clock, P M.

The Convention met pursuant to adjournment.

Mr. Hemphill, chairman of the Committee on the Judiciary, to whom was referred the subject of "How far the title to lands, owned by the citizens of Texas, would be affected by an adjudication in the federal courts of the United States," made the following report:

Committee Room, July 29th, 1845.

To the Hon. THOMAS J. RUSK,

President of the Convention:

The Committee on the Judiciary, who were instructed to take into consideration, how far the title to lands, owned by the citizens of Texas, would be affected by an adjudication of their rights in the Federal Courts of the United States, beg leave respectfully to submit the following:

REPORT.

By the terms of the resolution, the committee are restricted to an inquiry into the effect on the titles to real property, by an adjudication of the rights of claimants, in the Federal Courts of the United States.

Without reference, therefore, to the other legitimate objects for the exercise of the judicial power of the United States, let us proceed to examine the jurisdiction of the courts of the Union, in the decision of controversies involving the titles to real property, within the limits of the future State of Texas. Among other classes of cases, the federal judiciary is authorized by the Constitution to take cognizance of all those arising between the citizens of different states, and between citizens and aliens, or foreigners.

By the judiciary act, approved September 24th, 1789, the circuit courts of the United States are empowered to take original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law, or in equity, where the matter in dispute exceeds five hundred dollars, and the United States are plaintiffs or petitioners and an alien is a party; or the suit is between a citizen of the State where the suit is brought, and the citizen of another State.

As suits between aliens and citizens of other States, and the citizens of Texas, will involve all the controversies in relation to lands, which can arise on the rights of parties as now, by law established, and which are within the reach of the federal jurisdiction, we will not enquire into the rules which would control the action of the courts of the United States, on cases which may hereafter arise between the citizens of the State of Texas, should acts of subsequent state legislation infringe on the obligation of contracts, or violate rights secured by the provisions of the Constitution of the United States: such cases can only originate, in future legislation.

Were there any conflicting grants of lands from different States to be found within our limits, they would furnish occasion for the interposition of the federal judiciary to settle, between our own citizens, whatever controversies might arise from this source. It is believed that no such cases exist; and they, therefore, require no special notice.

In referring to the cognizance of the rights of aliens to lands, by the federal courts, the committee intend to embrace only the cases of aliens holding lands, by titles emanating directly from the government, or where aliens are, by law allowed a reasonable time to take possession and dispose of lands accruing to them by inheritance.

Whether aliens, who have purchased lands from individuals in this Republic can, in our own courts, maintain or defend suits for the adjudication of their claims; whether their titles are good against individuals, and can only be divested by a judicial proceeding, in the nature of an inquest of office; whether the defects in an alien's title are cured by naturalization; or whether his citizenship is prospective in its operation, upon his rights to real property, are questions which we propose not to discuss. They are not properly within the scope of the inquiry to which the attention of the committee has been directed.

Some of the most important of these questions are already before the judicial tribunals of the country for decision. They involve immense interests; and any opinions offered by the committee would not only be inexpedient, but could have no influence on the action of any court before which such disputes are pending, or may be brought for judicial determination: we will only say, that some of the most enlightened tribunals have decided that the rights of citizenship are altogether prospective; and that an alien's title to lands, purchased before his naturalization, acquire no increased validity, nor are their defects remedied by his subsequent citizenship.

But the principal source of power to the judiciary of the Union, to determine on rights to real property, springs from controversies between the citizens of one State and those of another State—a correct understanding of what parties in this class of cases, are necessary to vest jurisdiction in the federal courts, and of the rules, principles, and laws, by which their decisions will be governed, will, the committee trusts, be sufficient to answer all the purposes of the inquiry directed, by your honorable body.

The citizenship necessary to give cognizance to the federal courts, consists of a residence or domicil in a particular state, by a citizen of the United States. It may be changed by a removal, in good faith, and with an intent to fix a residence permanently in another State.

Should the removal be for a temporary purpose, with intention of returning after its accomplishment, the person is still considered a resident of the State whence he departed.

The title in the plaintiff who is a citizen of a different State, must be obtained in good faith; for if the conveyance which has been made by a citizen of the State where the suit is brought, be merely colorable and collusive, it will not give the court jurisdiction.

Executors, administrators, and trustees, who are citizens of different States, may maintain suits in the federal courts, though their testators, intestates, or *cestui que* trusts, were, or may be, citizens of the same State with the defendants.

When jurisdiction has once vested, a change of domicil during the pendency of the suit, does not divest the jurisdiction. [See Morgan's heirs *v.* Morgan et al, 2, Wheaton's Rep., 290, and vol. 4th, cond, Rep. 121, and cases referred to] But the more important object of our inquiry, is to ascertain by what laws and rules the decisions of the federal judiciary will be controlled.

In the 34th section of the "Act to establish the Judicial Courts of the United States," before referred to, it is provided, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the U. States, in cases where they apply."

This provision is but a legislative recognition of the principles of universal jurisprudence, as to the operation of the *Lex Loci*, in the trial and decision of causes. The true principles of the local law must govern, and not those derived from the jurisprudence of other States or foreign countries. This rule is particularly applicable to disputes involving real property. The judicial tribunals of all countries (more especially where the common law prevails,) recognize, to its fullest extent, the principle—that real estate is subject to the laws of the government within whose territory it is situate.

Should then a controversy arise between a citizen of this country and a citizen of another State, who, subsequent to our incorporation into the American Union, might acquire a claim to lands within this State, either by inheritance, devise, or purchase, and should suit be prosecuted for the same, in the federal courts the rights of the parties would be decided by the same laws and in the same way in which they would be determined in the courts of [illegible]

Whether the laws, or the [illegible] usages of Spain, the decrees of Mexico, or the laws of Coahuila and Texas, or the laws of the Republic of Texas, or the existing laws, affect the rights in controversy—to each and all of these laws, would the courts of the Union give their just force and effect: and by no other laws nor principles deduced from other systems of jurisprudence, would the question at its issue be determined.

Neither the Constitution, treaties, nor laws of the United States can change, alter, or modify, the rights of individuals to real property, as established by the existing laws of the Republic. Both the federal and the state courts will be restricted in their decisions on those rights, to the provisions of the laws under which those rights originated or by which they have been affected. And should rights have arisen under that portion of our Constitution and laws which, as being repugnant to the Constitution and laws of the United States, will become null and void; yet the rights thus created, will remain undisturbed.

The government of the United States is one of limited authority. All powers not expressly granted, are retained to the States, or to the people. All laws enacted by the States, not inconsistent with the Constitution of the United States, are valid and obligatory, not only upon the citizens of the State, but upon others who may claim rights or redress for injuries under those laws. The establishment of the federal courts, and the jurisdiction granted them in specified cases, could not, consistently with the spirit and provisions of the Constitution, impair the obligation imposed by the laws of the State, by setting up in those courts, a rule of decision at variance with that binding on the citizens. In accordance, then, with these well established constitutional principles, the laws now affecting contracts, regulating the disposition and transmission of property, &c., will not only be valid, but all made subsequent to our admission into the Union, not conflicting with the Constitution of the United States, will be equally obligatory. By the rules there prescribed, will our civil conduct be tested, and our rights determined, before whatever tribunals they may be adjudicated? But the courts of the Union will not only decide questions depending on local laws in conformity with those laws, but in such cases, (and more especially where titles to lands are involved,) the construction put by the state courts, on those laws, where that is settled and ascertained, will be adopted by the courts of the United States. And whether the decision of the courts of the State be grounded upon the construction of the statutes of the State, or form a part of the unwritten law of the State, which has become a rule of property, they will be regarded, by the federal courts, as of equal obligation. In the case of Polk's lessee *v.* Wendell, 5 Wheaton's Rep 293, the Supreme Court hold the following language: "The sole object for which jurisdiction of the cases between citizens of different States is vested in the courts of the United States, is to secure to all the administration of justice, upon the same principles under which it is administered between the citizens of the same State—hence the court has never hesitated to conform to the settled doctrines of the States on landed property, where they are fixed, and can be satisfactorily ascertained; nor would it be ever led to deviate from them, in any case that bore the resemblance of impartial justice." [Vide Brown v. Van Braam 3, Dallas' Rep 344, and 1 Cond Rep. 157, and cases cited.] Nor need apprehensions be entertained, that the federal courts will disregard the provisions of the statute of limitations. This class of laws has always been regarded with favor, by the federal courts. None have been considered as more universally sanctioned by the practice of nations, and the consent of mankind, than those which give peace and confidence to the actual tiller of the soil. All the reasonable purposes of justice are regarded as subserved, if the courts of a State have been left open to suits, for such a time as may raise a presumption in the occupier of the soil, that the fruits of his labor are effectually secured to him, beyond the chances of litigation. That prescription is a thing of policy, growing out of the experience of its necessity; and the time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every nation, in virtue of that sovereignty from which its legislation, for all persons and property within its jurisdiction, derives its authority. Where a question arose on the validity of the statute of a State, prescribing a shorter period for bringing suit on the judgment of a foreign tribunal, than on one obtained in the court of the State, it was held that such a provision was not repugnant to the Constitution of the United States: that there was no clause in that instrument, from which it could be plausibly inferred that the States might not legislate upon the remedy, in suits upon the judgment of other States. [Bell *v.* Morrison 1 Peters 360; McCluny *v.* Silliman 3 Peters 276; McElnoyle *v.* Cohen 13, Peters 312.]

All controversies which may arise between citizens of this state, and aliens authorized to sue, will be determined by the same rules and laws which will guide the courts in the decision of causes between the citizens of different states.

Your committee have confined themselves to deductions drawn entirely from the Constitution, laws and judicial decisions of the United States. These afford the most solid grounds of assurance, that the rights of individuals to property, will be guarded with the most jealous vigilance, by the courts of the United States; and determined on the same principles of law which constitute the rules of decision in the tribunals of the state. The establishment of the federal courts within the limits of the state, and their cognizance of disputed claims to lands, will not injuriously affect the titles of citizens of this Republic. It will simply furnish a citizen of another state, or an alien, a selection between two *forums*, for the adjudication of his rights, both of which courts will be controlled by the laws of the state upon which those rights are founded, or by which they are controlled

The beneficent operation of the judicial power of the Union, in this class of cases, is the best proof of the enlightened wisdom of the framers of the Constitution, in clothing the federal courts with this high jurisdiction The right to select a tribunal altogether independent of any of the states, for the settlement of controversies between the citizens of different states, and between citizens and aliens, tends greatly to increase the harmony and confidence between the states themselves; and preserve peace, and public and private credit, in our intercourse with foreign nations. It prevents all irritations and jealousies which might otherwise spring up between the different states, if the controversies between their citizens were, of necessity, subjected to the arbitrament of the tribunals of either. In the exercise of this jurisdiction, justice has been impartially and wisely distributed, while the laws of the states, not inconsistent with the Constitution of the United States, have been observed, sustained, and enforced.

JOHN HEMPHILL, Chairman.

ABNER S. LIPSCOMB, JAMES LOVE, JAMES SCOTT,
ISAAC VAN ZANDT, R. E. B BAYLOR, J. P. HENDERSON,
JOS L. HOGG, A C HORTON, WM C YOUNG,
JAMES ARMSTRONG. J. S. MAYFIELD, E H TARRANT,
L. D. EVANS, W. B. OCHILTREE.

Mr. Gage moved to have 500 copies printed; and on motion of Mr. Parker. 1000 copies were ordered to be printed.

The committee on judiciary made the following report which was adopted

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Committee Room, Austin,
July 29th, 1845.

The Committee on the Judiciary, to whom was referred a resolution, instructing them to enquire into the expediency of inserting in the Constitution, a clause providing for the appointment of an officer, in each judicial district, whose duty it shall be to enquire into, and cause to be adjudicated in all the district courts, all cases, in their respective districts, of land titles forfeited, lands escheated within the territory of Texas; also, to enquire into the expediency of setting aside the monies arising from the sale of such lands, for the purposes of education, have had the same under consideration, and respectfully report:

That the insertion of such a provision in the Constitution, as the one referred to in the resolution, would be inexpedient. It has been heretofore, and will be hereafter, competent to the legislative power of the

Government, to adopt proper measures to secure, for the public benefit, all lands which have been forfeited, for any cause whatever.

And the committee pray to be discharged from the further consideration of the subject.

[Signed] JOHN HEMPHILL,
Chairman.

On motion of Mr. Moore, the Convention took up the

ORDERS OF THE DAY.

The first question in order, was the motion of Mr. Rusk, to re consider the vote prohibiting the salary of judges being increased, during their term of service; which motion was carried, and the vote re-considered.

Mr. Henderson moved that the report of the judiciary committee be laid on the table for the present; which motion was lost

The question was then taken, on adopting the amendment of the committee, which is as follows: In section 9th, 4th line, after the word "be," insert the words "increased or," so as to read "be increased or diminished during their continuance in office," upon which the ayes and noes were called, and are as follows:

Ayes—Messrs President, Anderson, Armstrong of J., Armstrong of R., Bagby, Burroughs, Clark, Cunningham, Darnell, Davis, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Irion, Jewett, Jones, Latimer of L, Latimer of R R, Lewis, Lumpkin, Lusk, Lipscomb, M'Gowan, Moore, Parker, Power, Rains, Runnells, Scott, Smyth, Standefer, Van Zandt, White and Wright—38.

Noes—Messrs Baylor, Bache, Brashear, Caldwell, Cazneau, Everts, Henderson, Howard, Hunter, Love, Mayfield, M'Neill, Miller, Tarrant, Ochiltree and Young—16.

So the amendment was adopted.

The question was then taken on the motion of Mr. Darnell, to reconsider the vote fixing the salary of district judges at $1500; upon which the ayes and noes were called, and are as follows:

Ayes—Messrs President, Armstrong of R. Caldwell, Cazneau, Clark, Cunningham, Darnell, Forbes, Hemphill, Henderson, Horton, Howard, Holland, Irion, Jewett, Love, Lusk, Mayfield, McNeil, Miller, Moore, Power, Tarrant, Ochiltree, Van Zandt, Wright and Young—27

Noes—Messrs Anderson, Armstrong of J, Bagby, Bache, Brashear, Burroughs, Davis, Everts, Gage, Hicks, Hogg, Hunter, Jones, Latimer of L, Latimer of R. R, Lewis, Lumpkin, Lipscomb, McGowan, Parker, Rains, Runnels, Scott, Smyth, Standefer and White—26.

So the vote was reconsidered.

Mr. Horton moved to strike out "$1500," and insert "$1700;" upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Cazneau, Clark, Cunningham, Darnell, Forbes, Hemphill, Henderson, Horton, Howard, Holland, Irion, Jewett, Love, Lusk, Lipscomb, Mayfield, M'Neil, Miller, Moore, Tarrant, Ochiltree, Van Zandt, Wright and Young—27.

Noes—Messrs. Anderson, Bagby, Baché, Brashear, Burroughs, Caldwell, Davis, Everts, Gage, Hicks, Hogg, Hunter, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, M'Gowan, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer and White—26.

So the amendment was adopted.

The additional section proposed by the committee, to come in between the 9th and 10th sections, is as follows:

"The Judges of the Supreme and District Courts shall be removed by the Governor, on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment: *provided*, however, that the cause, or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each House; and *provided* further, that the cause, or causes, shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass; and, in all such cases, the vote shall be taken by yeas and nays, and entered on the journal of each House respectively," which was read.

Mr. *Jewett* said, he had proposed this amendment, in order to place some more efficient restraint on the judiciary, than the power of impeachment. The experience of our republic on this subject, has proved that this power has been but an ineffectual scarecrow. Cases may arise, where the negligence or incompetency of judges would not afford a sufficient ground for impeachment, but the public good might require their removal. Impeachments are seldom preferred, and are difficult to be sustained. The history of the judiciary both in Texas and the United States, shows that the possibility of impeachment is but an ineffectual check upon a corrupt or incompetent judge. It was said by Mr. Jefferson, that judges seldom die and never resign; and although it is not proposed to give our judiciary, a tenure of office during good behavior, the lessons of the past should prompt us to adopt a plan, that will make the judges more responsible to the people, for official malfeasance or neglect, than can be done by rendering them removable from office, only by the tardy and uncertain process of impeachment.

The additional section was adopted.

The amendment of the committee to the 10th section, last line, to strike out the word "same," and insert the word "State," was adopted.

The amendment of the committee to add to the 10th section, the following, was adopted:

"And in the trial of all criminal cases, the jury trying the same, shall find and assess the amount of punishment to be inflicted, or fine imposed, except in capital cases, or where the punishment or fine imposed shall be specifically prescribed by law."

The amendment of the committee to the 11th section, 2d line, is as follows: Strike out "amounts to," and insert "exceeds."

Mr. Ochiltree offered the following as a substitute. In same section and line, read "exceed in amount five hundred dollars, exclusive of interest;" which was adopted by the Convention.

The following amendment of the committee, was proposed as a substitute to the 12th section, down to the word "and," in the 4th line: "The Legislature shall, by joint vote of both Houses, elect one Attorney General, who shall hold his office for the term of two years; and a District Attorney for each Judicial District, who shall hold their offices for two years; and in case of vacancy, the Governor shall fill such vacancy until the next session of the Legislature;" which amendment was rejected by the Convention.

The committee proposed the following additional section, to come in between the 11th and 12th sections:

"There shall be a Clerk of the District Court for each county, who shall be elected by the qualified voters for members of the Legislature: he shall hold his office for two years, subject to removal by information, or by presentment of a grand jury, and conviction of a petit jury. In case of vacancy, the District Court shall have the power to appoint a clerk, until a regular election can be had;" which was adopted.

The amendment of the committee to the 13th section was adopted, and is as follows: Add to the section—"The sheriff shall not be eligible more than four years in every six."

The following substitutes to a part of the 14th section, from the word "when," in the third line, to the word "case," in the 6th line, inclusive, was proposed by the committee, and adopted by the Convention—"When the Supreme Court, or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, or when no judgment can be rendered in any case or cases in said court, by reason of the equal division, in opinion, of said judges, the same shall be certified, to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of said case or cases."

The following is the amendment of the committee to the 15th section:

Strike out all after the word "estates," in 4th line, add "and the District Court shall have such jurisdiction over said tribunals, and over executors, administrators, guardians, and minors, as may be prescribed by law."

On motion of Mr Cunningham, the amendment of the committee, together with the 15th section of the report, was referred to the committee on the judiciary

The following is an additional section proposed, by the committee, to section 16:

"In all actions pending in the district courts, whether in law or equity, either party, upon application, shall have the right of trial by jury.

"In all actions, arising out of contracts, before any inferior tribunal, when the amount in controversy shall exceed ——— dollars, either party, upon application, shall have the right of trial by jury.

"In all cases where justices of the peace, or other judicial officers of inferior tribunals, shall have the right to fine or imprison for any violation of a penal statute, the accused shall have the right of a trial by jury"

Which, on motion of Mr. Love, was referred to the judiciary committee.

On motion of Mr. Cazneau, the report and amendments were laid on the table, and the secretary ordered to make out a fair copy of said report, embodying the amendments

On motion of Mr Jewett, the Convention adjourned until half past 8 o'clock to-morrow morning.

Wednesday, July 30, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

On motion of Mr. Young the report of the judiciary committee, made on yesterday, was re referred to the same committee.

On motion, the report of the committee on printing, of July 26th, requiring the bond of the public printer to be given to Thos. J Rusk, President of the Convention, and the resolution of said committee, requiring the Secretary of this body to superintend the printing and distribution of the Journals, &c., were taken up and adopted.

Mr. Hemphill offered the following resolution:

Resolved, That it is expedient to insert in the Constitution the following clause: "No provision of this Constitution shall be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from the enjoyment of any of the immunities and privileges to which he is entitled under the Constitution of the United States," which was laid on the table one day for consideration.

On motion of Mr Davis, the Bill of Rights was taken up

In the 2d section Mr. Evans moved to strike out "except for public services," which motion was lost.

In the 6th section, Mr. Forbes moved to strike out the words "and in all publications injurious to female reputation, the facts thereof shall not be inquired into, but shall be deemed false and libellous;" upon which the ayes and noes were called for and were as follows:

Ayes—Messrs President, Armstrong of J, Armstrong o R, Bagby, Bache, Brashear, Brown, Clark, Cunningham, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Holland, Hunter, Latimer of R. R, Lewis, Lumpkin, Lipscomb, M'Gowan, M'Neill, Parker, Power, Rains, Scott, Smyth, Standefer, Tarrant, White and Young—33

Noes—Messrs Anderson, Baylor, Caldwell, Cazneau, Davis, Evans, Hogg, Horton, Irion, Jewett, Jones, Latimer of L, Lusk, Mayfield, Runnels, Ochiltree and Wright—17.

So the clause proposed was stricken out.

On motion of Mr. Mayfield, the following words were stricken out of the same section, "but in other cases the truth shall not avail as a defence," upon which the ayes and noes were called, and were as follows:

Ayes—Messrs President, Anderson, Armstrong of J., Baylor, Bache, Brashear, Caldwell, Cazneau, Clark, Darnell, Evans, Everts, Gage, Hemphill, Hicks, Horton, Holland, Hunter, Irion, Lewis, Lumpkin, Lusk, Mayfield, M'Neill, Parker, Power, Runnels, Tarrant, Ochiltree, White and Wright—31.

Noes—Messrs Armstrong of R., Bagby, Brown, Cunningham, Davis, Forbes, Henderson, Hogg, Jewett, Jones, Latimer of L, Latimer of R. R., Lipscomb, M'Gowan, Rains, Scott, Smyth, Standefer and Young—19.

So the clause was stricken out.

Mr. Smyth offered the following substitute for the 6th section: "In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the jury shall have the right to determine the law and facts under the direction of the Court, as in other cases." Which was adopted.

Mr. Cunningham offered the following substitute for the 14th section, "no person being unable to pay shall be imprisoned for debt."

Mr. Scott offered the following substitute to the substitute offered by Mr. Cunningham: "That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law."

Mr. *Lipscomb* said: That if the substitute of the gentleman from Montgomery (Mr. Scott) should be adopted, the debtor might be imprisoned at the moment, whether he had given up all his property or not. The legislature can at all times pass laws which will punish debtors who commit fraud, without running the risk of punishing the innocent.

Mr. *Scott* said: The balance of trade is against us now, but it may be in our favor after a while. He had no idea that the legislature would pass a law, at present, for the imprisonment of the debtor. Public opinion is against it; perhaps the public good does not require it. But he wished the legislature to have the power to give the writ of *ca. sa.*, if hereafter thought beneficial.

Mr. *Henderson* said: He thought not only public prejudice, but humanity were against it. But he differed with the gentleman from Washington with regard to the operation of the substitute of the gentleman from Montgomery. He did not believe, with him, that every man would be imprisoned for debt. A man might be imprisoned for fraudulent concealment, or he might be arrested while the suit was pending, but not imprisoned; for he has the liberty of giving bail. And he would venture to say that there is no honest man in Texas, who cannot give bail. There is no man who is unable to pay, however much of a scoundrel, but would be able to give security for his appearance to abide the determination of the suit.

Mr. *Ochiltree* said: There is not an article in the Constitution of which I should feel more proud, than of this 14th article in the Bill of Rights. The philanthropists of the age have been endeavoring for twenty-five years to bring about this desideratum. When our Constitution was adopted, with the provision which it contains, it was hailed as going farther than that of any State in the Union. I venture to say it is broader and stronger in securing the person of the debtor from incarceration than any other upon earth. But it has not entirely reached the evil. I cannot here, under any circumstances, support any provision which, by the ingenuity of counsel, may be so construed, as to allow of incarcerating the body of the debtor. The gentleman from Washington has suggested an ample protection to the creditor. If there is fraud, punish the crime, but never misfortune.

There is no hardship in this article. It is not retroactive in its effect. It is intended to apply to the future position of our citizens; and if the creditor entrusts his effects to the debtor, it will be with the full knowledge that he can never resort to the remedy against his person. I hope it will remain as it is. I do say it will stand forth as the proudest monument of the philanthropy of this Convention.

Mr. *Cunningham* said: I wish to see some restriction placed upon this section. The gentleman from Nacogdoches tells you, that the abolition of imprisonment for debt is a desideratum long sought for by philanthropists. There have been some who have taken this ground; but these philanthropists have not been found in the Conventions or Legislatures of the different States of the Union. They have all, with all their wisdom, imposed some restrictions upon the principle; they have all recognized in some manner the imprisonment of the person for debt. The gentleman tells you that the clause in our present Constitution was hailed throughout the United States by the philanthropists, as having gone a step further than any other. Now the clause which I have offered as a substitute is precisely the same as this of our Constitution.—That I think is going too far; the Legislatures of the different States of the United States, agree that it is going too far. He says the Legislature may pass laws punishing frauds. He knows very well that it is impossible to pass laws which will punish fraud. The ablest Judges in England have said that it is impossible to define fraud: how can you punish for an act which is not defined? It assumes such a variety of shapes that it cannot be defined: therefore it cannot be punishable.

Mr. *Anderson* said: I am opposed to imprisoning a man first, and trying him afterwards. I am opposed to punishing misfortune as a crime. Human ingenuity has never yet been able to discern how to obtain redress in this manner. The adoption of this clause, I believe, will act as a preventive, and do away with all necessity for such a remedy. It will check, to a great extent, the credit system. With a clause of this kind, men will be careful in trusting individuals, where they expect no redress from the laws of the country. I have often been forcibly struck with the story of the Indian, who in walking through the streets of some city, saw a public jail, and being informed of its use, remarked that he thought it a poor place for people to kill deer to pay their debts with. I think so, too. I am radically opposed to imprisonment for debt, because it is repugnant to free institutions: I view it as a relic of barbarous times, and one of the foulest disgraces of the age. I am opposed to anything which restricts the rights of individuals without producing a great and general good. The liberty of the person is man's proudest and greatest natural right. I am therefore in favor of the section as it now stands, believing it as I do, one of the brightest features of the Bill of Rights.

Mr. *Lipscomb* said: There will always be found to be two antagonistic interests entering deeply into legislation; those of the creditor and the debtor. The interest of the creditor is supported by the wealth of the country, and money is power. Hence this interest has always arrayed on its side the best professional skill which can be obtained. Believing as I do, that, in this country particularly, the great interest is that of the debtor class, and not the creditor. I am disposed to throw what little influence I may possess in favor of the debtor class. We have legislated, as though the whole interest of the country was a commercial interest. Commercial men will never give up any hold; they will exact the eye or the tooth, or draw the last drop of blood, if necessary for the payment of their debt. If we pass this amendment, what a chance will it not give to the legislature to say, there is nothing in the Constitution to prevent holding a man to bail for debt; and it is not, as may be said by the gentleman from San Augustine, always an easy matter to get bail. Strangers come in with a great deal of property: they are sued as they come in, and held to bail. What would prevent the legislature from passing such laws? As the law now stands, a man may be held to bail, and compelled to give up every cent of property or go to jail before his case is tried. I wish to deprive commercial men of the power to obtain such laws. At the same time, however, I am disposed to go as far as any man to punish fraud. It is said that it is impossible for the lawyers of England to understand fraud. Jurists, however, can understand it. They all have said, that fraud is a mixed question of law and fact. What prevents its being punishable? If a man puts the money of his creditor in his pocket, cannot the fact be inquired of by a jury, and is not the jury compelled to say whether there was fraud in so doing?

Mr. *Brown* said: I am entirely willing in all cases of public offiences, that the person shall be made responsible to the law. But I am unwilling that, for the mere violation of a contract, for a mere refusal or inability to pay, one citizen should become a slave at the will and caprice of another. I am perfectly satisfied, sir, that any offence against law or public morals, connected with the situation of a debtor, may be made by the passage of a statute to punish frauds: and thus society will be as effectually guarded against the consequences of such actions, as if the imprisonment of the debtor were allowed. But I would have it a public offence: I would have the testimony taken before the grand jury of the country, indictment found, and the fact finally decided by a judge and a petit jury. Let the person committing it be subject to the law as other offenders; but do not place it in the power of a malicious creditor to arrest a man and put him in duress It has been said that fraud could not be defined. I know of no authority to that effect. I know that cases of fraud are very various, very numerous, and that all the instances could not be defined. But whether a man has acted in good or bad faith, is a question which a jury can as well determine as any question in the world. Only one species of fraud has been spoken of: where a person possessing the means of discharging his debts, refuses to do so. Let the matter go before the jury, let the indebtedness be established, and his ability to pay also established: then is there not a plain case of fraud to which the court can fix a penalty? And so with every species of fraud:

I would have all public offences stand upon the same footing, and tried in the same way. I am entirely unwilling that any discrimination should be made, which, with the show of a prosecution of justice, might gratify prvate malice and vindictiveness. I never would consent to construe accident or misfortune into crime. And even in those cases in which confidence has been abused, trust betrayed, and property taken, and no satisfaction is made where the power to make it exists, I would have it remedied as other criminal cases, and not by a clause in the Constitution, which may place one citizen, whether acting fairly or unfairly, entirely at the mercy of another.

Mr. *Cunningham* said: In order to punish any offence, it is necessary that it should be particularly described in the law books. If fraud is left undefined, and still punishable, I look upon it as the very acme of tyranny; a law left within the bosom of the judge. I am satisfied that no law can be made to punish fraud.

The ayes and noes being called on the substitute offered by Mr. Scott, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Burroughs, Caldwell, Cunningham, Forbes, Hemphill, Henderson, Hicks, Latimer of R. R., Lumpkin, Parker, Scott and Wright—16.

Noes—Messrs. Armstrong of R., Baylor, Bache, Brashear, Brown, Cazneau, Clark, Darnell, Davis, Evans, Gage, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Lewis, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Power, Rains, Runnels, Smyth, Standifer, Tarrant, Ochiltree, White and Young—35.

So the substitute was rejected.

The question on Mr. Cunningham's substitute was put and rejected.

The ayes and noes being called on the adoption of the section, stood thus:

Ayes—Messrs. President, Anderson, Armstrong of J., Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Darnell, Davis. Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L, Lewis, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Parker, Power, Rains, Runnels, Smyth, Standifer, Tarrant, Ochiltree, White and Young—42.

Noes—Messrs Armstrong of R, Bagby, Burroughs, Cunningham, Hicks, Latimer of R. R., Lumpkin, Scott and Wright—9.

So the 14th section was adopted.

Mr. Henderson offered the following as an additional section, to come between the 14th and 15th sections:

"The Legislature may pass such laws as they may deem necessary to punish debtors for fraudulently disposing of, or concealing their property to avoid the payment of their debts."

Upon which the ayes and noes were taken, and are as follows:

Ayes—Messrs. Armstrong of R., Bagby, Baylor, Bache, Caldwell Cazneau, Evert's, Forbes, Gage, Hemphill, Henderson, Hicks, Jewett Latimer of R R, Lumpkin, Lipscomb, Parker, Power, Scott, Smyth, Tarrant, White and Wright—23.

Noes—Messrs. President, Anderson, Armstrong of J., Brown, Burroughs, Clark, Cunningham, Darnell, Davis, Evans, Hogg, Horton, Holland, Hunter, Irion, Jones, Kinney, Latimer of L., Lewis, Lusk, Mayfield, McGowan, McNeill, Rains, Runnels, Standifer, Ochiltree and Young—28.

So the additional section was rejected.

Mr. *Jewett* moved to strike out the 16th section, relating to the prohibition of emigration. He said that the prerogative, he believed, was not disputed, of restraining emigration from a State, whenever it should be thought proper and necessary. He thought emergencies might arise, particularly in Texas, when persons might be disposed to emigrate beyond the Sabine to avoid personal danger. In time of war, invasion or rebellion, it might be highly necessary for the State to exercise this power.

Mr. *Hemphill* said he would second the motion. He saw no reason for placing a restriction of this kind in the Constitution. There is no probability of our perceiving what contingencies may arise in the course of our history. The events of this very day and hour show us that such a provision should not be inserted in our Constitution. We are still at war with Mexico; we do not know at what time we shall have an invasion; we do not know when it may be necessary to prevent persons emigrating to avoid the war, or taking their property or means over to the enemy. It will be impossible, if this section is adopted, to prevent any individual from going away, and taking his property and goods with him; because it would be no offence, though we were actually in a state of war, or on the point of going to war. Individuals might not only go across the Sabine to place themselves in safety, but some might actually go over to the enemy And furthermore, we have nothing to do with this matter because it is a power which belongs to the United States It is no advantage in our Constitution; I consider it perfectly superfluous in every respect; a gratuitous display of philanthropy, for which there is no necessity at present, and which may do injury hereafter.

The section was stricken out.

Mr. *Evans* moved to strike out the 19th section. He objected to the clause, as altogether anti-republican in its spirit. It represents the functionaries of the government as a superior order of men, and the people as their inferiors. It secures the right of the people to assemble in a *peaceable* and *respectful* manner, so as not to offend the functionaries of the government; it secures the right of the people to do certain things, *provided* they are respectful. Now he held that the people are the sovereigns, and the functionaries of the government their servants. He held that the people had the right to assemble, whether peaceably or not, provided it were for the public good, and no functionary could interfere with them. He wanted the people to stand out in their full and ample majesty.

The Convention refused to strike out.

Mr. Anderson moved to insert "citizens of this State." Lost.

Mr. Brown moved to strike out "in a peaceable manner, to assemble together for their common good; and"—leaving the people to judge of the necessity for their assembling together. Lost.

Mr. Forbes offered the following as a substitute for the 20th section: "No department of the government shall have the power of suspending the laws of the State"

Mr. *Mayfield* said: He did not apprehend that there was any great danger that the amendment would pass. Yet he thought himself called upon in a few words to state the reasons which would induce him to vote against it. We may individually and collectively be called upon, perhaps in a short time, to burnish our arms, and march to the defence of our country from an invading foe. In such a case, he was unwilling for one to see those who might see proper to remain at home, in place of hazarding their lives in defence of their country, institute suits against the soldiers who might be thus employed, to oppress them or their families. In the history of all States, a condition of things may arise, where public policy and utility would require the suspension of laws and of their execution, till a state of quiet and repose could be brought about. He wished therefore to leave this matter as it is in the report. Without pointing to instances where the safety of the State itself might demand such a suspension for the time being, he would content himself with a single remark; there might be a general call to defend the country, and, when called from their homes, the people would wish to leave no Shylock behind, taking his judgments and executions against those who were battling for the country.

Mr. *Forbes* said: The remark has already been made here, that there are too classes, creditors and debtors. But he thought that, in Texas the debtors were the wealthy, and the creditors the poor men. He was willing, however, to provide for the case contemplated by the gentleman; he was willing to insert a proviso, that, during periods of war, the Legislature should have power to suspend the laws. But it is known to all, that the power of suspending the laws, has not only been improperly used by the Legislature, but we have seen the executive of the country suspend a positive law of the land.

Mr. *Hemphill* said: Unless the power were given the Legislature, to make a provision of this kind for a short time, he should vote against the section altogether. Because emergencies might arise, especially during military operations, to render it necessary. As for example, such as have occasioned the suspension of habeas corpus for the safety of a city. He did not suppose there was any gentleman here who would doubt that General Jackson acted right when he suspended the laws in New Orleans. He hoped the Legislature would make a suitable provision.

The substitute was rejected, and the section adopted.

Mr. Mayfield, in behalf of a portion of the committee on general provisions, reported back to the Convention the preamble to the Constitution, with amendments, which was laid on the table, to come up among the orders of the day.

Mr Hunter offered the following to come in as an additional section after the 17th section:

"Those who conscientiously scruple to bear arms in the public defence, shall not be compelled to do so, but may be required to pay an equivalent for personal services."

Mr. Lusk moved to strike out the words "pay an equivalent for personal service," and insert "furnish a substitute." Rejected.

The ayes and noes being called on Mr. Hunter's amendment, stood as follows:

Ayes—Messrs. Bache, Cunningham, Evans, Hunter, Latimer of R. R, Love, Lusk, Lipscomb, Power, Tarrant, Ochiltree and White—12.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Brown, Burroughs, Caldwell, Cazneau, Clark, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Lewis, Lumpkin, Mayfield, M'Gowan, M'Neill, Miller, Parker, Raine, Runnells, Scott, Smyth, Standefer, Wright and Young—41.

So the amendment was rejected.

Mr. Mayfield moved to strike out the words "or cruel," in the 11th section. Lost.

Mr. Ochiltree offered the following as an additional section, to come in after the 12th section:

"That the free citizens of this state shall have a right to keep and bear arms for their common defence, provided the Legislature shall have the right to pass laws prohibiting the carrying of deadly weapons secretly."

Mr. *Evans* objected that this would give the right to carry bowie knives.

Mr. *Hogg* inquired whether it would secure the right of taking deadly weapons about the person?

Mr. *Ochiltree* said: He was as much opposed to that as any body. How shall it be remedied? The legislature has the right to say, they shall not be carried secretly. But certainly he was not to be prevented from carrying them if he thought it necessary. If this is not inserted, there is no telling how far the legislature, in their extreme philanthropy may go. They may go to the extent of saying, that a man shall not wear them under any circumstances. He might be compelled to allow himself to be assassinated, or his property to be invaded, by being denied the use of necessary weapons. We might be placed in the condition of the people of Ireland, and a large portion of England, who are denied the right of having fire arms about their houses. One of the first principles of freedom, is the right to bear arms. It is true, it may have been prostituted to the worst of purposes; but it is too great a right to deny on that account. Such cases always attend the settlement of new countries; and public opinion will reform the abuse after a while. Under a similar provision, precisely, the legislature of Alabama has prescribed the carrying of weapons secretly, and the supreme tribunals have decided that it is not an infraction of the Constitution.

Mr. *Baylor* fully agreed with the gentleman, that the right to bear arms is essential to freedom. For it is the policy of governments to disarm the people, that they may have the opportunity to oppress them. This great right ought to be guarantied; but it is subject to great abuse. The gentleman has correctly stated the decision of the Supreme Court of Alabama. But there is a conflict upon this subject. The Supreme Court of Kentucky decided, in a similar case, that the legislature could not pass any law upon the subject. For if it had the right to proscribe one mode of wearing arms, it had the right to proscribe another, and thus it might finally defeat the great end and object.

Mr. *Hemphill* staid: That the object of inserting a declaration that the people shall have a right to bear arms is, that they may be well armed for the public defence; it is in order that the law regulating the militia should be kept up. It is not a supposition which can arise in country where the common law prevails, that it is necessary to use arms for protection against a fellow citizen.

Mr. Hemphill offered the following as a substitute for Mr. Ochiltree's amendment:

" A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Mr. Ochiltree moved a call of the Convention.—Lost.

The ayes and noes being called, on the adoption of Mr. Hemphill's substitute, stood thus:

Ayes—Messrs. President, Bagby, Bache, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Forbes, Gage, Hemphill, Henderson, Hicks, Hunter, Irion, Latimer of L, Latimer of R. R., Lewis, Love, Lusk, Lipscomb, Mayfield, M'Neil, Miller, Standefer, White and Wright—30.

Noes—Messrs. Armstrong of J , Armstrong of R., Baylor, Evans, Hogg, Horton, Holland, Jewett, Jones, Kinney, Lumpkin, M'Gowan, Power, Rains, Scott, Smyth, Ochiltree, and Young—19.

So the substitute was adopted.

Mr. Hogg offered the following amendment:

" Provided, that the Legislature may pass laws to suppress the practice of bearing arms concealed, in the private walks of life."

Mr *Jones* said: He should vote for the amendment, and then against the whole section, believing it unnecessary.

The ayes and noes being called, on the adoption of the amendment, stood as follows:

Ayes—Messrs. President, Bagby, Baylor, Bache, Brashear, Caldwell, Clark, Evans, Everts, Forbes, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Jewett, Jones, Latimer of L , Latimer of R. R., Lewis, Love, Lumpkin Lusk, Lipscomb, McGowan, McNeil, Power, Parker, Scott, Smyth, Ochiltree, White and Young—34.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Burroughs, Cazneau, Cunningham, Davis, Henderson, Hicks, Irion, Mayfield, Miller, Rains, Runnels, Standefer, Tarrant and Wright—17.

So the amendment was adopted.

Mr. Armstrong offered the following as a substitute for the additional section, as amended:

" Every citizen shall have the right to bear arms in the lawful defence of himself and the state." Adopted.

Mr. Hemphill moved to amend the additional section, by inserting before the word "bear," "keep and." Adopted.

Mr. Everts offered the following amendment:

"Provided the Legislature shall have power to prevent the carrying of concealed weapons, under such restrictions as may be prescribed." Rejected.

The ayes and noes being called, on the adoption of the section, stood thus:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Cunningham, Davis, Everts, Gage, Henderson, Hicks, Hunter, Irion, Latimer of L., Lewis, Mayfield, M'Neill, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Wright and Young—33.

Noes—Messrs. Clark, Darnell, Evans, Forbes, Hemphill, Hogg, Horton, Jewett, Jones, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, M'Gowan, Miller, Power and White—18.

So the section was adopted.

Mr. Mayfield moved to lay the Bill of Rights on the table. Lost.

On motion of Mr. Cazneau, the Bill of Rights was ordered to be engrossed.

Mr. Mayfield offered the following resolution:

Ordered: That the Convention, for the future, shall hold but one session per day, which shall be held between the hours of half past 8 o'clock, A. M., and 4 o'clock. P. M., of each day, (Sundays excepted.)"

Which was read and laid on the table one day for consideration.

On motion of Mr. Mayfield, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Thursday, July 31st, 1845.
Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

On motion of Mr. Davis, the report of the Executive Committee was taken up.

Mr. Young moved to amend the 2d section, by inserting after the word "electors," the words "of the State." Adopted.

The section, as amended, was then adopted.

Mr. Jones moved to strike out, in 3d section, 7th line, the words "the highest number of votes," and insert "a majority of all the votes." Rejected.

Mr. Bache moved to insert after "election," in 3d section, 1st line, the words "signed by the judges." Lost.

In the 4th section, 2d line, before the word "years," Mr. Van Zandt moved to strike out "four" and insert "two." upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Irion, Jewett. Latimer of L., Latimer of R. R., Lumpkin, Lusk, Mayfield, Rains, Scott, Standefer, Tarrant, Van Zandt, Wright and Young—32.

Noes—Messrs. Brown, Caldwell, Evans, Everts, Forbes, Henderson, Hunter, Jones, Kinney, Lewis, Love, Lipscomb, M'Gowan, M'Neill, Miller, Navarro, Parker, Power, Smyth, Ochiltree and White—21.

So the amendment was adopted.

Mr. Hogg moved to insert in the 4th section, 5th line, before the words "citizens of the United States," the word "native," upon which the ayes and noes were as follows:

Ayes—Messrs. Armstrong of R., Hogg, Lusk, M'Gowan and Young—5.

Noes—Messrs President, Anderson, Bagby, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney. Darnell, Davis. Evans, Everts. Forbes, Gage, Hemphill, Henderson, Hicks, Horton. Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis. Love, Lumpkin, Lipscomb. Mayfield, M'Neill, Miller, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer Tarrant, Ochiltree, Van Zandt, White and Wright—50.

So the motion was rejected.

On the motion of Mr. Van Zandt, the word "eight," before "years," was stricken out, and "six" inserted.

Mr. Scott moved to strike out the following: "but shall not be eligible for more than four years in any term of six years."

He said he did not see why the governor should not be re-eligible. His object was, that the governor might be elected as long as the people might choose to elect him. There is no reason why he should be put out, as in the case of a bonded officer.

The ayes and noes were called upon the motion to strike out, and stood as follows:

Ayes—Messrs. President, Armstrong of R. Baylor, Burroughs; Evans, Everts, Forbes, Howard, Lumpkin, Parker, Scott, Standefer and White—13.

Noes—Messrs Anderson, Bagby, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cunningham, Coney, Darnell, Davis, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones. Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, Lipscomb, Mayfield, M'Gowan, M'Neill, Miller, Navarro, Power, Rains, Runnels, Smyth, Tarrant, Ochiltree, Van Zandt, Wright and Young—44.

So the motion was lost.

Mr. Davis offered the following amendment to the 4th section: "and, at the first election, shall have resided in this State two years; and in all other elections shall have resided in the State four years." Rejected.

Mr. Evans moved to strike out, in 4th section, "and shall have resided in the same four years." Lost.

Mr. Young offered the following amendment:

Strike out all after "age," in the 5th line, 4th section, and insert "shall be a citizen of the United States; and shall have resided four years in the State immediately preceding the election, or shall be a citizen of Texas at the adoption of this Constitution."

Mr. *Henderson* moved, as a substitute for the amendment of Mr. Young, to strike out "four" and insert "three" before "years," in 4th section, 7th line, of the original report.

Mr. *Davis* said: I see no reason why any gentleman who is here at the time of the adoption of the Constitution, should not be eligible to any office in the gift of the people. There are individuals in this Convention who have not resided here three years. The people have confided to them the formation of the organic law of the country. Will you now say that they shall not administer the government, the organic law of which they have aided in forming? I do not see any sensible reason why any individual who is here at the adoption of the Constitution, should not be entitled to all the rights and privileges of a citizen. Although, as I will remark, I have no idea of being a candidate, am I, after a residence of three years, and having rendered all the service of which I am capable, to be told that I am not entitled to all the rights and privileges of other citizens? I think it would be extremely illiberal. I think it would be the proper way, to place every individual here at the time of the adoption of the Constitution, upon an equal footing.

Mr. *Henderson* said: I do not know that any body has accused the gentleman from Liberty of being a candidate. If he will look, he will see, perhaps, that this is intended to cover his case. The rule in every case is the same; a certain residence is required. I think there is no illiberality in adopting the same rule which existed in the Constitution of Texas before gentlemen emigrated to this country. And I see a clear distinction between the office of governor and that of delegate to this Convention. Some counties may think themselves well represented here, and I know they are very well, by gentlemen who have been in the country but a short time. But I think it is due the citizens of Texas, that the situation of governor should be filled by gentlemen who have resided here, and are not only acquainted with our institutions, but with all the people of Texas, and the interests of Texas. It will work no hardship; you give all the full privileges held out to them by the Constitution when they came here. And I see no good reason why gentlemen who happen to be here one day before the adoption of the Constitution, should have any privileges over those who come in one day after.

Mr. *Kinney* said: I am more in favor of the section as it stands. There are a good many princes coming into the country, and who have come in, bringing with them a number of loyal subjects, who may be disposed to make themselves governors hereafter. I believe it is better and safer for the people to require that the governor shall have attained a residence of a few years, before he is permitted to occupy that station. I believe there is very good material in Texas for governors, among those who have been residents of the country for four years. And any one who is ambitious of being governor of the State of Texas, can hold on a little while. I think, upon mature reflection, gentlemen will let the section remain as it is. I was in favor of reducing the time to three years, but shall now vote for a residence of four years.

Mr. *Lewis* said: I think the present arrangement a wholesome one. In looking over the different State Constitutions, I find that four years constitutes the very shortest residence which any of them have required for the governor. And if that is necessary in old and well settled communities, where the character of every man is well understood, and his politics known, is it not necessary here, where we are thrown together from every portion of the country, a heterogeneous mass, without a knowledge of new comers, or even of our neighbors? I would not wish to exclude any gentleman in the Convention or the country from seeking and obtaining the highest offices in the gift of the people. But, sir, the character, politics, and every thing connected with the man who seeks office, are things which the people wish to know something about. Virtue and political integrity are necessary in a governor; and the people may be imposed upon. To guard against these impositions, I am inclined to require a residence of four years, the shortest period prescribed in any Constitution to which I have referred. I trust, therefore, that gentlemen who are ambitious, or who have ambitious friends will wait a little. Let them perform a quarantine. Let them wait for political elevation till they are known throughout the country. Those who aspire to an office in the gift of a State, should have an acquaintance co extensive with the country; they should be known from one end of it to the other. The people would not then be imposed upon by specious talents and high pretensions. These are briefly my reasons for the vote I shall give, and reflection confirms me in the correctness of the opinion which I have formed upon the subject.

Mr. *Brown* said: This is a question which deserves some reflection. Under our old Constitution, a man becomes eligible to the presidency in three years. Now, it is my opinion, that the rights of persons by the change of government ought not to be diminished or enlarged But I am satisfied that the safety of the State requires the term to be nearly double that time. I cannot see any reason for making a discrimination between persons who shall have been in the country at the date of the Constitution, and those who shall come in thereafter If the case admitted of one general rule, and I had to designate it, I would fix a term of five or six years at least. But I would say that those persons who are in the country before the adoption of the Constitution, are entitled to all the benefits embraced in the Constitution. For that reason I shall vote for three years. Not that I believe the term sufficiently long, but I wish not, and I think it would not be right, because the government has to undergo a change, that the political relations of any citizen should be thus altered.

Mr. *Horton* said: As there seems to be some difficulty in bringing the question properly before the Convention, and I wish to have it come up in the proper shape, if possible, I will move the previous question.

The question—shall the main question be now taken?—was put; upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Burroughs, Cunningham, Cuney, Forbes, Gage, Hemphill, Hicks, Horton, Howard, Holland, Irion, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, Lipscomb, M'Neill, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree and Wright—34.

Noes—Messrs. President, Anderson, Baylor, Brown, Caldwell, Cazneau, Clark, Darnell, Davis, Evans, Everts, Henderson, Hogg, Hunter, Jewett, Lumpkin, Mayfield, M'Gowan, Parker, Runnells, Van Zandt, White and Young—23. Carried.

The main question being the adoption of the section without the amendments, was put and carried.

In 5th section, in regard to compensation of Governor, Mr. Burroughs moved to strike out "$2000," and insert "$1500"

A division of the question being called for, the question upon striking out was taken; upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Baylor, Bagby, Brashear, Burroughs, Caldwell, Davis, Evans, Everts, Forbes, Hicks, Hogg, Hunter, Jewett, Latimer of L, Latimer of R. R., M'Gowan, Parker, Rains, Runnels, Scott, Standefer and White—23.

Noes—Messrs President, Armstrong of J, Armstrong of R., Bache, Brown, Cazneau, Clark, Cunningham, Cuney, Darnell, Gage, Hemphill, Henderson, Horton, Howard' Holland, Irion, Jones. Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, M'Neil, Miller, Navarro, Power, Smyth, Tarrant, Ochiltree, Van Zandt, Wright and Young—35.

So the question on striking out was lost.

Mr. Hunter moved to strike out the word "first," before "governor," in 5th section. Lost, and the section adopted.

Mr. Howard moved to strike out, in the 6th section, 2d line, the words "and of the Militia." Lost.

Mr. Love offered the following amendment to the 6th section, "but the Governor shall not take command in person, when the army is in actual service."

Rejected, and the section adopted.

Mr. Van Zandt offered the following substitute for the 12th section:

"There shall be a seal of State, which shall be kept by the Governor, and used by him officially. The said seal shall be a star of five points, encircled by an olive and live oak branches. and the words "the State of Texas." Adopted.

Mr. Lewis moved to strike out the 14th section, providing for Lieutenant Governor, upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Bache, Brashear, Burroughs, Darnell, Davis, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jones. Latimer of L., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Parker, Rains, Scott, Standifer and Ochiltree—27.

Noes—Messrs. President, Armstrong of J., Bagby, Baylor, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Evans, Everts, Forbes

Gage, Hemphill, Henderson, Jewett, Kinney. Latimer of R R., Love, Mayfield, Miller, Navarro, Power, Runnels, Smyth, Tarrant, Van Zandt, White, Wright and Young—31.

So the motion was lost.

Mr. Jewett moved to insert "or be unable to serve," after the word "refuse." Adopted.

In the 15th section, 5th line, Mr. Lewis moved to strike out "two-thirds," and insert "a majority."

Mr. *Van Zandt* said he believed it was out of order; the amendment had been made in committee of the whole, and had been rejected by the House.

Mr. *Jones* said he believed the motion was in order; yet he should oppose it, and hoped it would not be entertained; believing, as he did, that it would leave no check upon the two Houses. If a majority of all the members present, and it is presumed that nearly all will be present, should pass a bill, and it should be returned, as a matter of course the same majority would pass it over the veto. It would give the Governor no revisionary power whatever over the improper legislation of the two Houses.

Mr. *Henderson* said it appeared to him that the question of a veto power, in connection with a State government, was a very different question from what it would be in relation to the United States' government, or that of the Republic of Texas. If this were to be a separate government, he would be in favor of the two-thirds rule. One of the two great objects of the veto, is to give the Executive the power to control the Legislature, so far as regards intercourse with other governments. It is supposed that the Executive is better acquainted with the foreign relations of the government over which he presides, than the Legislature can be: and it is necessary to prevent any act by which the country may come into collision with foreign powers. But the same reason does not prevail in a State government. All that is requisite here, is that the Governor may suggest his views to the Legislature, and induce reflection; and by that means, prevent the passage of an unwholesome law.

The same motion having been put and lost, on a previous day, the President decided the motion not to be in order; from which decision Mr. Henderson appealed, and the chair was sustained.

Mr. Lipscomb moved to strike out the entire section.

Mr. Forbes moved the previous question.

The question, shall the main question be now taken? was put; upon which the ayes and noes were called, and are as follows:

Ayes—Messrs President, Anderson, Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Forbes, Hemphill, Henderson, Hicks, Horton, Holland, Irion, Jewett, Jones, Latimer of L. Latimer of R R., Love, Mayfield, Miller, Navarro, Rains, Runnels, Scott, Van Zandt, White, Wright and Young—35.

Noes—Messrs. Armstrong of J., Brown, Darnell, Davis, Evans, Everts, Gage, Hogg, Howard, Hunter, Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Parker, Smyth, Standifer, Tarrant and Ochiltree—21.

Carried.

The main question being the adoption of the section, the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Bache, Bagby, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Forbes, Gage, Hemphill, Henderson, Horton, Howard Holland, Jewett, Jones, Latimer of L. Latimer of R R., Love, Lumpkin, Mayfield, McNeill, Miller, Navarro, Parker, Rains, Runnels, Scott, Smyth, Van Zandt, White, Wright and Young—38.

Noes—Messrs. Armstrong of J., Baylor. Brown, Darnell. Davis, Evans, Everts, Hicks, Hogg, Irion, Lewis, Lusk, Lipscomb, McGowan, Standifer, Tarrant and Ochiltree—17.

So the section was adopted.

In 16th section, Mr. Lewis moved to insert, after the words "two houses," the words "of the Legislature." Adopted.

Mr. Love offered the following as an additional section, to come in, between the 16th and 17th sections:

"Nominations to fill all vacancies that may have occurred during the recess, shall be made to the Senate, during the first ten days of its session; and should any nominations so made be rejected, the same individual shall not again be nominated during the session, to fill the same office; and should the Governor fail to make nominations to fill any vacancy, during the session of the Senate, such vacancy shall not be filled by the Governor, until the next meeting of the Senate." Adopted.

Mr. Howard offered a substitute for the 19th section, providing for the appointment of a State Treasurer, and Comptroller of Public Accounts, to be appointed by the Governor, and confirmed by two-thirds of the Senate; which was decided to be out of order.

The ayes and noes being called, on the adoption of the section as it stood, were as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Miller, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standifer, Ochiltree, Van Zandt, White, Wright and Young—50.

Noes—Messrs. Forbes, Howard, Lumpkin, Power and Tarrant—5.

Carried.

Mr. Jones moved the rejection of the 2d section, relating to the militia; upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Brown, Caldwell, Cazneau, Davis, Gage, Hemphill, Henderson, Hogg, Jones, Latimer of L., Lumpkin, Lusk, Mayfield, McGowan, Miller, Parker, Rains, Runnels, Tarrant, Ochiltree, White and Young—25.

Noes—Messrs. Armstrong of R., Baylor, Bagby, Bache, Brashear, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Hicks, Horton, Howard, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Love, Lipscomb, McNeill, Navarro, Power, Scott, Smyth, Standifer, Van Zandt and Wright—33.

Lost,

Mr. Hunter moved to strike out the word "shall," and insert the words "may be required to".

Mr. *Hemphill* said he did not suppose there is any person here who has such conscientious scruples. But if we have any such, we ought not to compel them to pay any money at all.

Mr. *Jones* said he was not disposed to disagree with the gentleman from Washington: but in this matter of conscience, we might give too broad a field. Gentlemen may find it inconvenient or dangerous to do the duty required of them, and a great many may have conscientious scruples upon the subject. He thought those who have conscientious scruples equally bound with their fellow citizens to keep up good order, and participate in the defence of the country. For that reason, as an equivalent is provided for, he hoped it would remain so.

The motion of Mr. Hunter was lost.

Mr. President *Rusk* said: I dislike to trouble the House upon this question, as there seems to be a heavy majority in favor of inserting the provision. But it is, as it stands, an exemption from important services to be rendered to the country. And it is not definite: it simply provides, that those who have conscientious scruples about bearing arms shall not be compelled to do so. It is an important exemption, particularly in a country threatened with war. There is no method designated here, by which to arrive at these conscientious scruples. A Mexican might say he had conscientious scruples against bearing arms where the country in which he was born is a party engaged in the war. They might have these scruples as well as the members of the sect around which the Convention is disposed to throw their guarantee. I have no disposition by any vote or remarks of mine to cast any imputations upon the respectable sect of Quakers, who do conscientiously scruple to bear arms. But they have feelings and principles directly adverse to the inerests of the country. This is giving a broad exemption to all who may have conscientious scruples upon any subject whatever; without defining any means for ascertaining the persons who are exempt. How is this matter to be determined? Where is the tribunal to determine whether a man has really conscientious scruples, or whether they are intended to answer some particular end? It is known that this class of people also entertain conscientious scruples about a certain species of property we have here. The first section seems to me amply sufficient; leaving it to the Legislature to prescribe such rules and regulations as shall be found necessary upon the subject. And I believe a provision of this kind might become in time dangerous to the welfare of the State.

Mr. *Van Zandt* said: I hope, Mr. President, that the section will be adopted: though I regret to differ with the gentleman from Nacogdoches, who has had so much experience in military affairs. There is a sect of Christians, who believe it to be wrong, to be against religion, morals, and the laws of God, to bear arms and fight the battles of their country. If any individual has such a feeling or belief, I believe it would be better to excuse him, to take his money, and hire a man who would fight. The great difficulty in this country is not the want of men, but the want of means to employ them. And such persons can find a substitute; he can employ some one who will go with heart and soul into the ranks, and do battle manfully in the cause of his country. Gentlemen may say that some Mexicans here might refuse to fight the others; that many of these people are not loyal. Sir, we have proud instances to the contrary. There are many who have stood up as manfully in the the cause of the country's freedom and independence as any men born upon any soil. But if any should urge their conscientious scruples, I wish not to take them into the ranks. I believe that individuals fighting under these impressions, would not make good soldiers; and that as remarked a few days ago by the gentleman from San Augustine, they would produce more disafection and injury, than ten times the number of enemies. I wish to see in the armies of Texas, none but those who go willingly; I wish to see no clogs and chains placed upon the freemen of this country to force them to battle. I believe the ties of country and the feeling of patriotism sufficient at all times to collect the requisite force to maintain the honor and independence of our country at home and abroad.

Mr. *Mayfield* said: I believe that this is a subject upon which men should have no conscientious scruples. According to my political faith, the first duty imposed upon a man, after the protection of his family, is that which he owes to his country. I believe that the country which protects him in the civil walks of life, in the exercise and enjoyment of civil and religious liberty, has a claim upon him above that of the petty admonitions of conscience against bearing arms, when that country is invaded, its institutions threatened, and its freedom itself cast upon the die. For my own part I cannot see, so far as Texas is concerned, to whom this principle is to apply, and for what particular reason it has become necessary to incorporate it in the Constitution of the land. When we consider our peculiar position, we shall see that war, not only in the present, but future times, may, in some degree, become the vocation and policy of this people. Upon what principle, then, of public policy shall we insert a provision of this kind? It is contended by the gentleman from Harrison, that such men are worth nothing in the ranks. Sir, let them, like the soldier in the war of the American revolution, who entertained these conscientious scruples, be put at the butchering of beef. The army may require services of that kind; and if they cannot draw a trigger upon human kind, they may make very good butchers for the camp.

Mr. President *Rusk* said: In alluding to the Mexicans, it seems to be assumed by the gentleman from Harrison, that I have cast some imputation upon the Mexican character, and takes occasion to pass an eulogium upon it. Now, sir, I have not cast any such reflection. I have stood by, and seen a great many Mexicans nobly sustaining the principles of freedom, stand firm in the battles of the country. I have given them as much credit as any; I have never once even thought of casting any imputation upon them. The gentleman thinks we have nothing but chivalry in Texas. Sir, I have had some experience in these matters; I have seen much chivalry displayed, but at the same time I have seen the absolute necessity of something like law. The gentleman's argument would destroy the government entirely. I think if we cast a glance at the history of the past, we shall say that some laws are necessary, even in Texas. We are establishing a law here, without providing the means of information, without designating a tribunal. If we thus exempt a man from military duty, without providing a court for the investigation of such cases, he is the court himself. Suppose the gentleman was leading a brave and chivalrous army, and one should step out of the ranks (for a man gets converted sometimes,) and say, "I have conscientious scruples against bearing arms," what could he do with him? He has a broad shield thrown over him, and he is made the judge himself. There is a class of Christians in the United States, upon whom I intend to throw no imputations whatever, who entertain conscientious scruples against bearing arms, and also against slavery. If you throw this broad shield and protection over them, if you excuse them from the performance of their duties required of other citizens, you will to some extent invite that sort of population here. Now, suppose that a population of that description should come here, and a large portion settle down in a particular place. Suppose an insurrection of the slaves to take place, and the salvation of the State, and the lives of the wives and children of the country to be in imminent danger; these people are doubly protected by your Constitution, with this provision.—They have conscientious scruples against slavery itself, as well as against bearing arms. We have lived under a Constitution for eight or ten years without this provision. I look upon it as totally unnecessary, and very likely to produce mischief.

Mr. *Scott* proposed to amend the section so as to read "*provided* he shall pay an equivalent for personal services". His exemption then will depend on paying the equivalent. A man who has scruples, had better not be compelled to go into the army; he does no good there at all; and the equivalent would be of some service.

Mr. *Anderson* said he hoped that would not be adopted, because it would be saying that the man who was not able to pay had no conscience.

Mr. *Van Zandt* said: I am satisfied with the section as it stands, or if the amendment of the gentleman from Montgomery is adopted, I will still vote for it. I am satisfied of the wisdom, talent and ability of the gentleman from Nacogdoches. I am satisfied, at the same time, that although he possesses these high qualifications, and almost every one in a high degree, yet he, like all others, may sometimes err. And although on most occasions, especially in a matter of doubt, I rely with confidence on his judgment, yet occupying as I do, an independent position here, and differing with him in opinion, I conceive that I am casting no imputation upon his good sense, to say that his is an incorrect one.

The gentleman says these scruples will arise about the time the fight comes on. Now, sir, as I am informed, the decision of the courts upon similar points is this: that these conscientious scruples must be connected with the tenets of some religious denomination.

I believe that striking out this clause is indirectly saying, that we not only deny the rights of conscience, but we have not confidence in the patriotism of our people for the defence of the country.

The gentleman from Nacogdoches brings in the great scarecrow of abolition, in my conception entirely foreign to the subject. Had I racked my brain for arguments, I believe I never should have hit upon this.

Mr. Anderson moved to insert, before the words "conscientious scruples", "from cowardice of".

Mr. *Hemphill* said: I believe that neither our past history, our present position, nor our history for the next ten years to come, will justify the insertion of such a provision in our Constitution. Look at our past history. What was the object of the colonization of this country?—What kind of people did the Mexicans invite here? Was it their object to invite Quakers or persons with conscientious scruples to settle here? No, sir: it was their intention to invite agriculturalists, every one of whom should be a warrior, to tame the wilderness, and to destroy, not only the wild beasts, but the wild men of Texas. They did not expect any man to come here who should pay an equivalent for personal services; they had seen enough of that in their own country. If we pass on to the time of the revolution and the consultation, there is nothing in the events of that day to show that a protection of this kind ought to have been extended. Everything in the acts of the Convention and the Congress, at that time, shows that such a maxim was entirely repudiated. Every man entertaining such opinions, and acting upon them at the time, according to the principle then adopted, should lose all his rights of citizenship and all his lands. Now a change has come over the spirit of the dream. Gentlemen think that men should not be compelled to engage personally in battling against the enemy, but should be allowed to pay money for their services. Yet we have been at war for years; we are still at war, and we know not what may be before us. We have the best reasons for expecting an invasion in a short time. Everything that comes from the United States and Mexico, shows a prospect of active hostilities. I cannot see the propriety or necessity of such a provision at this time. There is no telling to what extent these scruples of conscience may go. There may be a great number of persons who will take as broad a view of these matters of conscience as some took of the word "constitutional" in the late war with Great Britain; a large body of militia refusing to cross the river under General Van Renselaer, in October, 1813, after the first division which crossed had been overwhelmed, being suddenly affected by constitutional scruples. They had taken up the argument of the judges of Connecticut, and no positive decision having been made by the Judges and Governors of the different States, they took that with which they consulted their own safety at that particular time. Suppose a Texian army placed in a position upon the Rio Grande: to what extent might not the words "conscientious" or "constitution" be made to go? I am therefore opposed to the insertion of any such words in our Constitution, at least for ten years to come—There is no propriety of having citizens in our country, who have any conscientious scruples about bearing arms. It would be ridiculous and preposterous for people with such scruples to come to a country at war from its birth. I cannot suppose that such a thing could possibly take place.

Mr. *Love* said: I believe this subject has assumed a consequence here which does not belong to it. I think it improbable that, during our lives, we shall ever have a man in Texas, who entertains conscientious scruples upon this subject. According to my own observation, indeed, our people are too belligerent in their feelings and actions But, sir, as unnecessary as a provision of this nature may be, there is such a thing as the rights of conscience; and in my opinion they ought to be respected. And if there should by possibility be but one class of men who entertains these scruples, it is not only unnecessary to make them fight but cruel and inhuman. There are such men, who would die sooner. The Quakers, since their first organization, have been noted for their philanthropy, their patriotism, and all the qualities which belong to the good citizen and subject. I care not from what cause they may be induced to emigrate to a country, I think that any constitutional provision which would compel these men to fight in the battles of the country, against the conviction of their consciences for a long life, would be unnecessary, unjust and cruel. I do not think, if they were to come here, that they would ever interfere with the question of slavery. They have never endeavored, so far as I have heard, to deprive any man of his property unjustly. Believing slavery to be immoral and wrong, it is still a principle with them to leave the remedy to the Legislature of the country.

If a man in going into battle should be suddenly afflicted by conscientious scruples, it is then too late to talk about them; and the gentleman himself, if in command of the army, would order such a man to be taken and advanced out of the camp; and, if forced to fight, he would not know whether he shot his enemy or his comrades.

I happened, early in life, to have seen two trials before the circuit court, involving this identical point. The men were drafted and forced into the service; they came before the court on a writ of habeas corpus, and the issue was made up by the judge. In one case, the proof was, that the man was a citizen in the community, who was never suspected of entertaining any conscientious scruples upon the subject, and all went to show that this excuse was a trick resorted to for the occasion, to avoid being sent to New Orleans, where it was supposed to be so very sickly, that a man could not go there without losing his life. The judges decided that the case depended upon the fact, whether the man had belonged through life to any sect or denomination holding such principles as should exempt him from serving. There are thousands and thousands who would submit to death itself, before they would raise their hand against a fellow man.

I do not believe this is a matter of much consequence; but I shall vote for retaining the section, upon the ground, that an individual case may arise, for which I should wish to provide.

Mr. Young offered the following substitute for the 2d section:

"No licensed minister of the Gospel shall be required to perform military duty, work on roads, or serve on juries, in this State."

Mr. Latimer of L. moved the previous question.

The question—shall the main question be now taken?—was put; upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of R. Baylor, Bagby, Bache, Brashear, Burroughs, Clark, Cunningham, Davis, Evans, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Holland, Irion, Jewett, Jones, Kinney, Latimer of L, Lewis, Lumpkin, Lusk, Mayfield, Miller, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree and Van Zandt—38.

Noes—Messrs. Armstrong of J., Brown, Caldwell, Cazneau, Darnell, Everts, Hogg, Howard, Hunter, Latimer of R, R., Love, Lipscomb, McNeil, Power, Runnels, White and Young—17. Carried.

The main question being the adoption of the section, the ayes and noes were called, and stood as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Evans, Everts, Forbes, Hicks, Horton, Howard, Holland, Hunter, Irion, Latimer of L, Latimer of R. R., Lewis, Love, Lipscomb, M'Neill, Navarro, Power, Scott, Smyth, Standefer, and Van Zandt—29.

Noes—Messrs. President, Anderson, Armstrong of J, Brown, Caldwell, Cazneau, Darnell, Davis, Gage, Hemphill, Henderson, Hogg, Jewett, Jones, Kinney, Lumpkin, Lusk, Mayfield, Miller, Parker, Rains, Runnells, Tarrant, Ochiltree White and Young—26.

The substitute for the 2d section, offered by Mr. Young, having been cut off by the previous question, was re-offered by him, as an additional section.

Mr *Forbes* said: As we have excluded them from what is deemed an important privilege, I think it no more than right that we should also exempt them from the ordinary duties of private life. It may be the case that a minister may be summoned to serve upon a jury, when he has made an important appointment to meet his congregation.

Mr *Clark* remarked that he concurred with others in the opinion, that inasmuch as the Convention had shorn ministers of the gospel of the honors attached to civil life, it would be nothing more than right but they should be relieved from its burdens.

Mr. *Hicks* said: He should vote *no*, because it was giving ministers too much; he was willing to make a fair contract with them.

Mr. Lewis moved to amend it, by inserting after the word "Gospel," the words "so long as they continue to exercise the functions of their office;" which motion was lost.

The ayes and noes being called on the adoption of the section, stood thus:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R, Bagby, Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Darnell, Davis, Forbes, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Smyth, Standifer, Tarrant, Ochiltree, White and Young—41.

Noes—Messrs. Burroughs, Cunningham, Evans, Everts, Howard, Henderson, Hicks, Irion, Lumpkin, Mayfield, and Scott—11.

So the section was adopted.

Mr. Burroughs moved an adjournment to 4 o'clock, P. M.; and on motion of Mr. Howard, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Friday, Aug. 1, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Holland moved to reconsider the vote of yesterday, adopting the 4th section of the report of the committe on the executive department, upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Baylor, Caldwell, Cazneau, Clark, Darnell, Davis, Evans, Everts, Forbes, Gage, Horton, Holland, Hunter, Jones, Latimer of R. R., Love, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Power, Runnels, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, White and Young—35.

Noes—Messrs. Armstrong of R., Bache, Burroughs, Cunningham, Hemphill, Hicks, Hogg, Howard, Irion, Jewett, Kinney, Latimer of L, Lewis, Lumpkin, Lusk, Rains, Scott and Wright—18.

So the vote was reconsidered.

On motion of Mr. Ochiltree, the vote on the previous question, to adopt the 4th section, was reconsidered.

Mr. Jones presented the following protest against the adoption of the 31 section of the executive department, which was ordered to be spread upon the journals:

CITY OF AUSTIN, July 31, 1845.

To the Hon. T. J. RUSK,

President of the Convention:

The undersigned, one of the minority in voting on the adoption of the 31 section of the executive department of the Constitution, with due deference to the opinion of the majority, begs leave to differ with them in opinion, for the following reasons, viz: That majorities ought to control, and although policy may, in some instances, justify a slight variation from the general rule, and a plurality control in local elections, that policy ought not to apply in elections for Chief Magistrate of the State. The section provides that in elections for Governor, the candidate receiving the highest number of votes shall be the Governor, &c.; under which provision, if there shall be more than two candidates, the presumption is strong that none of them will receive a majority in cases where much competition may prevail. It is not improbable that one-fifth, or one tenth, of the electors of the state, may elect a Governor, who, on account of his elevated station (and the presumption that he will be the choice of a majority of the people) is vested with power to grant reprieves and pardons, to remit fines and forfeitures, and to have a controlling power in the Legislature, equal to two-thirds of the legislative department of the Government.

The undersigned believes that in an independent State, the controlling power should be vested in the people, and they, or a majority of them, have the exclusive right to delegate that power, and that the aforesaid section is in direct violation of well established principles of free governments.

For the above reasons, and many others which might be urged, the undersigned protests against the adoption of the said section, and respectfully requests that this communication may be spread upon the journals of the Convention.

(Signed.) OLIVER JONES.

A communication was received from the Commissioner of the General Land Office, which, on motion of Mr. Davis, was referred to a select committee of seven members.

Mr. Darnell moved to reconsider the vote adopting the section to exempt ministers of the gospel from working on roads, &c, &c., upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Baylor, Bagby, Burroughs, Cunningham, Darnell, Everts, Irion, Lumpkin and Scott—10.

Noes—Messrs. President, Armstrong of J., Armstrong of R, Bache, Caldwell, Cazneau, Cuney, Clark, Davis, Evans, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Jones, Kinney, Latimer of L, Latimer of R. R, Lewis. Love, Lusk, Lipscomb, M'Gowan, M'Neill, Miller, Navarro, Parker, Rains, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—44.

So the motion to reconsider was lost.

On motion of Mr. Van Zandt, the report of the committee on the executive department was taken up.

Mr. Young moved to strike out all after the word "age," in the 4th section.

As a substitute for Mr. Young's motion, Mr. Horton moved to strike out "four" before the word "years," and insert "three" in the original report.

Mr. Henderson moved to recommit the report to the committee on the executive department. Lost.

The question being on Mr. Horton's substitute.

Mr. *Van Zandt* said: I shall vote against it, because it does not carry out the object of the motion made by the gentleman from Red River. It is said that we are in a state of revolution; and I think the statement is true; I think that, although we are now acting under an organized government, although we are not in a state of chaos, and order and law prevail throughout the land, yet we are emphatically in a state of revolution. We are about to lay aside the forms of government under which we have been acting, and to assume new and other forms. We are as truly about to form a new government, as when the people threw off the Mexican constitution and formed that of '36. Then, as I believe, we are just in the position of a people in a natural state of a society, about to form a social compact; and in the formation of that compact, as it is declared in the Bill of Rights, we are all entitled to equal privileges The 2d article of the Bill of Rights, which we have adopted and engrossed, reads as follows: "All freemen, when they form a social compact, have equal rights; and no man, or set of men, is entitled to exclusive, separate, public emoluments or privileges, but in consideration of public services." Now, sir, is it not here proposed to draw tinctions among those here at the formation of a social compact? Who shall be participators in the benefits of this organization, if not those who are parties to that compact; and are not the people throughout the whole extent of the country, from east to west, and from north to south, as much parties to that compact, as any member of this Convention who shall sign that Constitution? That instrument asserts that all men are entitled to equal rights, and that no man, or set of men, is entitled to exclusive privileges. Then, I say, you violate one of the sacred principles of the Bill of Rights, if you exclude these parties to the compact from the enjoyment of all the offices provided for by the compact. If those who come afterwards should be required to reside here four years, it would present a different case. They are not parties to the compact, and therefore not entitled to all these privileges. We have the right to prescribe through what forms they shall go to attain to the rights of citizens. I believe that four years, then, would be a short enough term, I believe that this is no question of expediency or policy; but a question of right. I say, that if you adopt the principle contended for, you adopt it in violation of the Bill of Rights; that it is anti-republican in its character, and should not receive countenance here.

It is asserted by gentlemen here, that so soon as we are admitted into the United States, every citizen of Texas becomes a citizen of the United States. I say, that neither the laws nor the Constitution of the United States, nor the compact between Texas and the United States, make any such provision. The Constitution of the United States provides that Congress shall have the right to pass naturalization laws; and in consequence of the power thus delegated, the Congress of the United States has proceeded to pass such laws, requiring that individuals born in foreign countries shall reside in the country for five years, take the oath of allegiance, and so forth. As the act of Congress providing for our admission makes no exception to the general law of naturalization, those here, I care not how long they may have been citizens of Texas, I care not if born and bred upon the soil, will now be citizens of the United States, in consequence of annexation, the moment we are admitted into the Union. The law has required a residence of five years. The treaty of 1803, with regard to Louisiana, provides that the citizens of that territory shall be admitted, as soon as consonant with the Constitution of the United States, and as early as practicable to the rights of citizenship. The treaty of 1819 has the same phrase, "as early as practicable under the Constitution and laws of the United States." The treaty formed with Mr. Calhoun has the same feature, if I am not mistaken. By this construction, by implication, you would make men citizens who never swore allegiance to the government, or did any act amounting to the same thing. You would give the foreigners in this country, who are aliens to the United States, an advantage over other foreigners, who emigrate to the United States; an individual, by emigrating to Texas, may thus become a citizen of the United States, with six months' residence here. I am satisfied that gentlemen have not reflected fully upon this subject. If they had examined the treaties of 1803 and 1819, and the naturalization law of the United States, they would not have found anything to justify the construction they arrive at.

Mr. *Ochiltree* said: I fear, sir, that I am departing widely from a rule adopted by myself, on taking my seat upon this floor, not under any sort of circumstances to be troublesome to the Convention. I trust that I have not hitherto been so; at least, I have obtruded no long speeches upon the House. But when an argument relating to a matter of so much weight, seems to be directed exclusively at me, I trust I may claim the attention of the Convention to a few remarks in reply. The position taken by the gentleman from Harrison, is one, in my opinion, entirely untenable. I might assert, and I have been told by a gentleman learned in the law, a member of this body, that I have not gone far enough, that every citizen of this country, upon the change of flags will become, to all intents and purposes, a citizen of the United States; that upon our adoption, under the name and designation of the State of Texas, a quasi naturalization takes place; that under the Joint Resolutions, to the terms of which we have given our consent, every inhabitant of this country will become admitted into the national family of the Union, instantaneously upon the change of government. Whether I would go that far, I will not say now, because it is not necessary. I would ask the gentleman from Harrison if he has given the proper weight to the expression "at as early a period as *practicable*."? Is that intended to prescribe the ordeal of the naturalization laws to the citizens of the territory? By no means. It means that they shall, at the earliest day practicable, have the panoply of a State Constitution thrown around them; that they shall have the glorious privilege of living under a written Constitution, adopted by their own delegates in convention assembled. Now, I would ask the gentleman from Harrison how he reconciles the conclusion of his argument with the position he assumes, that every man having a share in the creation of the organic law of the government, should have the same share in the enjoyment of its privileges? What does he do with my friend from Bexar, a gentleman of as much learning, talent and worth, as any upon this floor, and a native born citizen? Shall he be told that he must go through an ordeal of five, six, or seven years, before he can go to the ballot box, or exercise the privilege of a citizen? Will he be obliged to go before the district judge and swear allegiance, after five years' residence, or to wait the action of the next Congress, to prescribe a special provision for the native born citizens of Texas, or those here at the formation of the government? Perhaps, when the gentleman from Bexar presents his vote for governor, it may be challenged, and he may be driven off by arbitrary judges. [Mr. *Van Zandt* said: That an individual in the position of the gentleman from Bexar, would undoubtedly be entitled to all the rights of a citizen of the *State;* but with relation to those rights and privileges which pertain exclusively to the general government, he was not well satisfied that he must not go through the forms of naturalization.] The gentleman, I am satisfied, is mistaken in this position No man can be a citizen of a state who cannot be a citizen of the United States; the *imperium in imperio* cannot obtain. A man must be a citizen of the United States to be a citizen of a state. The constitution of a state must contain nothing infringing the Constitution and laws of the United States. As I have said, I hold this truth to be self evident, that whenever the United States, by a joint resolution of Congress, shall accept the Constitution of the State of Texas, adopted by this Convention, she adopts into her family every citizen, native born of Texas, or here at the adoption of the Constitution of'36, and all who shall have lived here six months and taken the oath allegiance prior to that event. By the very act of adoption, the United States adopts the citizens of Texas *en masse.*

Mr. *Hemphill* said: It is argued by the gentleman from Harrison, that it will be necessary for natural born citizens of Texas, or any citizens, not citizens of the United States, to be naturalized under the laws of the United States. It would have given me more satisfaction if annexation had been effected by treaty; but, since it is impossible that should be the case, I think still, notwithstanding all objections which may be made in Congress, upon the particular subject to which the gentleman from Harrison has confined his argument, that our being admitted into the U. States naturalizes all persons who may be citizens of the State of Texas at the time of adoption Our case is similar to that of the State of North Carolina, or any other which adopted the Constitution of the United States. Under the articles of confederation, it was competent to every State to have its own laws of naturalization, and if a citizen of one State went to another, he was there naturalized, notwithstanding the difference in the law. When the States afterwards adopted the Federal Constitution, their citizens were naturalized under different laws; but when they adopted it, they became naturalized citizens of the United States I think the gentleman from Harrison has mistaken the provisions of the treaty of 1819. I think, upon examination of its articles, it will be seen, as contended by the gentleman from Nacogdoches, that all persons within the limits of Louisiana, when ceded by the French republic, were admitted immediately to all the rights of citizenship of a territory Not to all the rights of a state; there are some privileges secured to citizens of states, which are not to citizens of territories; suing in the United States courts, *for example.* The provision of the treaty referred to is, that the inhabitants of the territory shall be incorporated into the Union as soon as possible. Now according to the meaning of that provision, and the practice under it, they had the right to buy property in any of the States, not as aliens, but as citizens; they were not compelled to be naturalized at all. I do not suppose there is an instance to be found, where a person who then lived in Louisiana has been naturalized to become a citizen of the United States They enjoyed all the rights which belonged to citizens of territories; they had not the population necessary for a state at that time. We are admitted upon a very different footing; not purchased and bought up as a territory, but admitted as a State, with all the rights and privileges of a state. It is impossible to admit us as a state, unless we have on admission all the rights and privileges of the old thirteen States.

The argument founded on the Bill of Rights does not hold good, I think, except to a certain extent The Bill of Rights, and other portions of the Constitution, must be construed together; one part is as valid as another, and there can be no inconsistency between them. I cannot see why the Governor of the State of Texas should not be required to remain as long here as has been required for the Presidency. It is true, that our foreign relations will be broken off; that the same knowledge exactly which the President ought to possess, will not be necessary to the performance of the gubernatorial duties; still the duties will be of extreme importance, particularly for the first three or four years of our existence as a State. The whole system of laws and government has to undergo a change; the system of taxation has to be changed. I think the Governor ought to be acquainted with the history of the country from the first organization of the government down to the present time; he ought to know something of the various contracts of colonization; of the difficulties connected with land titles; something of the policy which has been kept up, and of the facts belonging to the history of the present time. He should be well acquainted with the condition of the country; because, within the next two or three years, our whole policy has to be settled with regard to our *debts* and our *lands*. I shall, therefore, when the question comes up, vote for a residence of three years.

On motion of Mr. Ochiltree, a call of the House was made.

On motion, the call was suspended.

The ayes and noes being called on the adoption of Mr. Horton's substitute, were as follows:

Ayes—Messrs. Armstrong of J., Baylor, Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis. Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Holland Jewett. Kinney, Latimer of R. R., Lewis. Love, Lusk, M'Gowan, McNeill, Miller, Parker, Scott, Smyth, Standefer Tarrant. Ochiltree and White—33.

Noes—Messrs President, Anderson, Armstrong of R., Bache, Clark, Cunningham, Evans, Everts. Hicks. Howard, Hunter, Irion. Jones, Latimer of L , Lumpkin, Lipscomb. Navarro, Power, Rains, Runnels, Van Zandt, Wright and Young—26.

So the substitute was adopted.

Mr. Van Zandt offered the following amendment to the 4th section as a substitute for Mr. Horton's amendment:

"Shall be a citizen of the United States, and of this State, and shall have resided within the same five years preceding his election, or shall be a citizen of this State at the time of the adoption of this Constitution."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Burroughs, Clark, Davis, Evans, Everts, Hunter, McNeill, Navarro, Power, Runnels, Scott, Van Zandt, White and Young—15.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Caldwell, Cazneau, Cuney, Cunningham, Darnell, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lipscomb, McGowan, Miller, Parker, Rains, Smyth, Standifer, Tarrant, Ochiltree and Wright—41.

So the substitute was rejected.

A division of Mr. Horton's motion to strike out "four," and insert "three," being called for, the question on striking out was taken.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Baylor, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Hunter, Irion, Kinney, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Runnels, Scott, Smyth, Standifer, Ochiltree, White and Young—39.

Noes—Messrs. Armstrong of R., Bagby, Bache, Clark, Cunningham, Hicks, Howard, Jewett, Jones, Latimer of L., Latimer of R. R., Navarro, Power, Rains, Tarrant, Van Zandt and Wright—17.

So the word "four" was stricken out.

Various motions were made to fill the blank with 5, 6, 10, 15 and 20.

Mr. Lipscomb moved to adjourn to 8 o'clock to-morrow morning.—Lost.

Mr. Lipscomb moved to adjourn to 4 o'clock, p. m. Lost.

Mr. Henderson moved to fill the blank with "nineteen."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Evans, Henderson, Howard and Tarrant—5.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham. Cuney. Darnell. Davis, Everts, Forbes Gage, Hemphill, Hicks, Hogg, Horton, Holland. Hunter. Irion, Jewett, Jones Kinney, Latimer of L, Latimer of R R, Lewis, Love. Lipscomb, Lusk, Lumpkin, McGowan, McNeill. Miller, Navarro, Parker, Power, Rains, Runnels, Scott. Smyth, Standifer, Ochiltree, Van Zandt, White, Wright and Young—51.

So the motion was lost.

Mr. Hunter moved to fill the blank with "six" Lost.

Mr Cunningham moved to fill the blank with "five."

Upon which the ayes and noes were called, and stood thus.

Ayes—Messrs. Armstrong of R., Clark, Cunningham, Evans, Hicks, Hunter, Irion, Kinney, Navarro, Ochiltree. Van Zandt and Wright—12.

Noes—Messrs. President. Anderson. Armstrong of J, Bagby, Baylor, Bache, Brashear, Burroughs, Caldwell, Cazneau, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Holland. Jewett, Jones, Latimer of L, Latimer of R. R., Lewis, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, White and Young—44.

Lost.

The question then recurred upon filling the blank with the word "three" before "years," in the 7th line of the 4th section.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson. Armstrong of J, Baylor, Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Holland. Jewett, Jones. Kinney, Latimer of R. R, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree and White—43.

Noes—Messrs. Armstrong of R,. Bache, Clark, Evans, Everts, Hicks, Hunter, Irion, Latimer of L., Navarro, Van Zandt, Wright and Young—13.

Carried.

Mr. Rusk offered the following amendment to the 4th section:

"Provided this section shall not be so construed as to prevent any person who may be a citizen of Texas, at the adoption of this Constitution, from being eligible to the office of Governor."

Mr. Lusk moved the previous question.

Mr. White moved to adjourn until 4 o'clock, p. m. Lost.

The question, shall the main question be now put? was carried.

The main question being the adoption of the section without the amendment, was put and carried.

Mr. Howard offered the following as an additional section:

"No member of this Convention shall be eligible to the office of Governor, Lieutenant Governor, Judge, Secretary of State, Treasurer or Attorney General, at the first election, or appointment, under this Constitution."

Mr. Love offered, as a substitute for the additional section offered by Mr. Howard, "No member of this Convention shall be eligible to fill any office created by this Constitution, for one year after its adoption by the people." Which was accepted by Mr. Howard.

Mr. Rusk moved to refer the bill and amendments to a special committee of three. Lost.

The question being on the additional section,

Mr. *Love* said, that he had for some time contemplated offering an amendment of this nature, when the report of the committee on General Provisions should be reached; and the gentleman from Bexar having offered one of a similar character, he proposed the substitute as better suiting his views. He honestly and sincerely thought it best to adopt some such provision, that it might be fully understood we are making a Constitution for the people, and not for ourselves; that we may go home with clean hands, and present it to the people as our honest labor and work for the benefit of the country at large.

Mr. *Howard* said: It was offered with sincerity; for he believed it a salutary provision. Nor is it without precedent; a similar provision is to be found in the Constitution of France, of 1791. He cited that precedent to show that it is not entirely novel. He did not conceive that it would or could possibly wound the feelings of any gentleman here; because not a single gentleman who had addressed this assembly, has any ambition at all; all disavow it. When gentlemen upon this floor have advocated what is generally called the largest liberty, when they have gone for a large extension of popular rights, the insinuation has been repeatedly thrown out, that such gentlemen were electioneering, that they were ambitious. He wished to take away all such weapons; that when this instrument is offered to the people, it may stand upon its own basis alone. Then, as the gentleman from Galveston says, it will go to the people with much higher credit, if none of the members of this Convention are to be eligible for office. Then as we are not ambitious, as nobody here wants any office, and as there are so many good reasons in its favor, he hoped it might be adopted.

Mr. Wright moved the previous question; which was carried. The main question being the engrossment of the bill, was put and carried.

The Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Gage, the report of the committee on General Provisions was taken up,

Mr. Lewis moved that the Convention resolve itself into a committee of the whole. Lost.

In 1st section, Mr. Mayfield moved to strike out all that portion of the oath or affirmation that requires members of the legislature and all officers to swear that they have not fought a duel, nor acted as second, &c.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Hemphill Irion, Jones, Kinney, Love, Mayfield, Navarro, Power, Runnels and Tarrant—18.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Bache, Cunningham, Davis. Evans, Everts, Forbes, Gage, Hicks, Hogg, Horton, Howard, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Rains, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White, Wright and Young—37.

Motion lost.

In the same section, 7th line, Mr. Evans moved to strike out the words "being a citizen of this State." Lost.

Mr Cunningham moved to insert after the word "officers," in section 1, 1st line, the words "of this State." Lost.

Mr. Hemphill moved to insert, in same section, 10th line, after the word "offending," "nor have I committed any other high crimes."

Mr. Anderson moved to amend by inserting "peccadillos." Lost.

Mr. Young moved the main question.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the section, the question was put and carried.

In section 2d, 4th line, Mr. Runnels moved to strike out "confession in open court," and insert the words "voluntary confession." Lost, and section adopted.

On motion of Mr. Anderson, the words "or misdemeanors" were stricken from the 3d line of the 4th section.

On motion of Mr. Davis, the words "serving on juries" were inserted in the 1st line of the 4th section, after the word "office."

Mr. Burroughs moved to strike out all of the 4th section, down to the word "misdemeanor," in 3d line. Lost, and section adopted.

Mr. Cazneau moved to strike out the section between the 4th and 5th, which excludes from office all persons engaged in fighting a duel.

Mr. *Mayfield* said: It occurred to him that the object of this section was amply provided for in the preceding: "other high crimes and misdemeanors": that would give the legislature the power of acting upon this matter, if we require the incorporation of any such principle in our laws. To engraft it upon the Constitution, he looked upon as absurd; and thought that such a principle, if established in our Constitution at this juncture, would lead to greater evils than those which it was expected to cure and heal. If we make this sudden assault upon the practice of duelling, however it may be reprobated, men will necessarily be driven to some other course, when suffering under real or imaginary injuries; in some cases, to assassination of the bloodiest character. For there are individuals in every community, who, when they have received a serious personal injury, would be willing to meet the individual who has inflicted it, fairly in a duel: but who, if disfranchised for so doing, if to be cut off from the immunities of holding office and suffrage, if to be deprived of all the sacred rights which belong to every freeman, would be driven to become assassins; to waylay by the roadside, to administer poison, and resort to every other method of revenging their injuries, rather than deprive themselves of the high privilege belonging to every citizen of a free State. He hoped it would not be adopted.

Mr *Anderson* differed in opinion with the *gentleman from* Fayette. He hoped the section would be retained. It was aimed at the evil which preyed upon the country for a great while, and he anticipated none of the results imagined by the gentleman, if the clause should be retained. The practice of duelling is at war with the present enlightened spirit of the age. It was repudiated by the intelligent Greeks and Romans; it grew up in the darker ages of Europe. It is a relic of barbarism; and in every enlightened country the greatest efforts have long been made to eradicate it. This provision may be efficacious to some extent as a preventive at least; it may lend support to the spirit of public opinion, which must ultimately put an end to this practice. Gentlemen might say that public opinion is the only remedy. But public opinion, like every thing else, must have its commencement. The law should give it inception; and it will continue to grow in proportion as the law sustains and supports that public opinion. Gentlemen will say this matter can be reached by the legislature. He was anxious that such a provision should be placed in the Constitution; statutes have been passed from time to time, but without effect.

The ayes and noes were called on striking out, and stood as follows.

Ayes—Messrs. President. Armstrong of J., Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Hemphill, Irion, Jones, Kinney, Love, Mayfield, Miller, Navarro, Power and Runnels—18.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Bache, Cunningham, Davis, Evans, Everts, Forbes, Gage. Hicks. Hogg. Horton, Howard, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Parker, Rains, Scott, Smyth, Standifer, Ochiltree, Van Zandt, White, Wright and Young—36.

Mr. Jones moved to strike out the word "either" before the words "within the State," and the words "or out of it" after the word "State," in 3d line of 4th section.

Mr. Everts moved to amend the amendment of Mr. Jones, by striking out the words "either within," in 3d line, and insert the words "or who shall leave this State with an intention to fight a duel, and who shall actually so fight out of the State.

Mr. Davis moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question—the adoption of the section, was carried;

In the 5th section, Mr. *Love* moved to strike out the words "by ballot," and insert "viva voce." I am of opinion, said he, that if we have annual elections for the legislature, and annual sessions, and vote *viva voce*, we shall be able to keep the political atmosphere pure, and the independence of the people will be perfect. I have ever thought the system of voting by ballot a sneaking business No freeman or independent man ought to be ashamed or afraid to give his vote in such a manner as to make known for whom or for what he votes. It is not necessary here to go into the frauds and impositions daily practised under the system by balloting; they are known to all. There cannot be any reason in this country for the vote by ballot. We have no tenants here. It may be said, and has been said, that in other countries, where the control of the landlord over the tenant is great, that if the vote of the latter were known, it might operate to his prejudice. Not so in Texas. We have no tenantry; and in all probability never will have to any extent. We have an extensive country, rich and fertile; where the poor man can have his land for nothing, already cleared to his hands; and if he chooses to work, he need not be tenant to any one. This reason might have some force, perhaps, in large States, where they have become densely populated. At present, the evil does not exist any where in this country. I believe it is more in consonance with republican virtue and republican principles, for every man to march up in the face of day, and vote, without fear, favor or affection, for whom he chooses.

Mr. *Howard* said: That he wished to offer a substitute. He would move to strike out after the word "ballot," the words "until the Legislature shall otherwise direct."

The effect will be, said he, to deprive the Legislature of any power on the subject. I will merely observe that the ballot has been, as I understand, the republican rule in this country. It is now a great principle for which the liberal party in England is struggling. And I can conceive of no reason, of no rule of right, which requires that I, on the day of election, should look at my neighbor's ballot, to see how he votes. I think he should be at liberty to exercise this right without control or influence; that he should be governed in his vote by his own judgment and sense of propriety. It is well known to every one who has paid any attention to the subject, that the Conservative party in England, by a species of intimidation, by having the power to know how every man votes, exert a species of control which is repudiated by the whole liberal party. I conceive that this would be a dangerous rule to establish; though it might not, at this time, operate badly in Texas. Whenever the country shall become densely populated, whenever commerce and manufactures shall spread themselves, and the credit system take root in the community, the *viva voce* system will be felt and exercised, as I conceive, prejudicially to the rights and liberties of the people.

Mr. *Van Zandt* said: I shall vote for the amendment of the gentleman from Bexar. I was in favor of it on the committee, but the majority were in favor of the section as it now stands I believe his reasoning is correct; especially when we take into consideration that we shall probably have large manufacturing establishments in the country. Merchants to some extent control the votes of their debtors; and, no doubt, those who deal upon credit will be able to control the elections.

Mr. *Davis* said: I agree with the gentleman from Bexar. I believe that there will be a large amount of tenantry in this country I know there is a very large quantity of land owned by a few individuals, almost enough, in some instances, to compose a county There is a great probability that these lands will not be disposed of by these individuals. It is sometimes the case that individuals are disposed to vote for the strongest man, and if the votes are taken *viva voce*, the state of the polls at each precinct will be known, and have a powerful influence on thos voting I do not believe that the Legislature ought to have the power of changing the system. It should be by ballot.

The question was put on the amendment of Mr. Love, and the ayes and noes being called stood as follows:

Ayes—Messrs. Anderson, Armstrong of J , Armstrong of R., Bache, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Evans, Forbes, Henderson, Jones, Love, Lipscomb, Mayfield, Miller, Power, Tarrant, White and Wright—21.

Noes—Messrs. President, Baylor, Bagby, Clark, Darnell, Davis, Everts, Gage. Hemphill, Hicks, Hogg, Horton, Howard, Hunter, Irion, Jewett, Kinney, Latimer of L , Latimer of R R , Lewis, Lumpkin, Lusk, M'Gowan, M'Neil, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, Van Zandt and Young—35.

So the motion was lost.

The question being on the amendment of Mr. Howard,

Mr. *Mayfield* said: I shall vote against the amendment for the purpose of leaving the Legislature of the country, whenever public opinion or necessity may demand a different policy, free, and at liberty to adopt it. In my opinion, in framing this Constitution, we should not be sedulous to fix and fasten our own peculiar opinions upon the country for all time to come. I flatter myself, that there are none in this assembly who would not be willing, that posterity should take advantage of the improvements of the age; and that there should be some liberty left to them, to change or modify the laws of the country, as circumstances and the force of public opinion may seem to require.

Mr. *Lusk* said: That he would not himself go as far forward as some gentlemen seemed desirous to do, in making the Constitution. He would confine himself to the wants of the people who sent him here; he did not know what might take place hereafter. If posterity want a remedy, they can do as we have done; let us act for the time being.

Mr. *Jewett* said: He believed firmly in the omnipotence of the Convention, but was not so thoroughly convinced of its omniscience. He would vote for retaining the section as it was, as he was willing to give a little to do to the Legislatures to come after us.

The ayes and noes being called, on the motion of Mr. Howard, stood as follows:

Ayes—Messrs President, Bagby, Clark, Darnell, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Howard. Holland, Hunter, Irion, Kinney, Latimer of L., Latimer of R. R , Lewis, Lumpkin, Lusk, M'Neill, Navarro, Rains, Van Zandt and Young—26.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bache, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Evans, Forbes, Henderson, Jewett. Jones, Love, Lipscomb, Mayfield, M'Gowan, Miller, Parker, Power, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White and Wright—29.

So the motion was lost.

The section was then adopted by the Convention.

Mr. Mayfield moved to lay the report on the table. Lost.

Mr. Ochiltree moved to insert in 6th section, 3d line, after "ten years," and no appropriation for private or individual purposes shall be made without the concurrence of two-thirds of both houses of the Legislature." Adopted.

In the same section, Mr. Mayfield moved to strike out "nor shall any appropriation be made for a longer term than two years."

On motion of Mr. Evans, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Saturday, Aug. 2d, 1845.
Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

The President of the Convention announced the following special committee on the communication of the Commissioner of the General Land Office:

Messrs. Davis, Henderson, Tarrant, Lipscomb, Baylor, Everts and Jewett.

Mr. Parker offered the following resolution:

Resolved, That this Convention will adjourn *sine die* on the day of instant, at 6 o'clock, P. M.

Which was laid on the table one day for consideration.

On motion of Mr. Davis, the Convention took up the

ORDERS OF THE DAY.

The amendment of Mr. Ochiltree to the report of the committee on General Provisions, being first in order, Mr. Cazneau moved that the Convention resolve itself into committee of the whole on said report. Lost.

Mr. Mayfield moved to strike out, in the 6th section, 2d and 3d lines, "nor shall any appropriation of money be made for a longer term than two years;" which was lost.

Mr. Smyth offered the following as an amendment to the amendment of Mr. Ochiltree:

After the word "purposes," insert "or for purposes of internal improvement"

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Burroughs, Clark, Cuney, Davis, Evans, Everts, Forbes, Henderson, Hogg, Howard Hunter, Irion, Jones, Latimer of L., Latimer of R. R, Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Tarrant, Ochiltree and Young—37.

Noes—Messrs. Armstrong of R, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Darnell, Gage, Hemphill, Hicks, Horton, Holland, Jewett, Kinney, Mayfield, Standifer, Van Zandt White and Wright—21.

So the amendment was adopted.

Mr. Forbes offered the following as an addition to the 6th section:

After the word "law," in the 5th line, "appropriations for the payment of the Judiciary shall be first made, and if there shall be any deficiency in the Treasury, such deficiency shall fall upon the other Departments of the Government, and in no case shall the Legislature have the power to issue treasury warrants, treasury notes, or paper of any description, intended to circulate as money."

Mr. Van Zandt moved to strike out that portion of the resolution relating to judges.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Brashear, Bache, Bagby, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Howard, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeill, Miller, Navarro, Parker, Power, Runnels, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, White and Wright—53.

Noes—Messrs. Anderson, Burroughs,, Forbes, Howard and Young —5

So the clause in relation to the judges was stricken out.

The question was then taken on the latter clause of the amendment, providing that in no case shall the Legislature have the power to issue treasury warrants, &c.

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R, R., Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Runnels, Scott, Standifer, Tarrant, Van Zandt, Wright and Young—45.

Noes—Messrs. Burroughs, Cunningham, Henderson, Hicks, Hogg, Lumpkin, Mayfield, McGowan, McNeill, Parker, Smyth, Ochiltree and White,—13.

So the amendment was adopted.

Mr. Wright offered the following, to come in after the words "two years," in 6th section, "except for objects of education," which was adopted.

Mr. *Evans* proposed an amendment, providing that the **Legislature** shall never legislate upon any private bill, or pass relief laws, **or resolutions** eulogizing any abstract principle, party, or **individual.**

He said he made this motion after a great deal of deliberation. He had not taken much care in drafting it, and might have used too many or too few words. The idea, however, must strike every member upon this floor. If we look over the history of legislation, we shall find the larger half of all the statute books composed of relief laws, and resolutions or laws passed for the purpose of eulogizing individuals and parties. The Legislature have spent the people's money for the purpose of benefiting private individuals; they have not classified all cases which should be provided for, they have not generalized them. He did believe that the case of every individual who has a demand upon the public treasury might be provided for by some general law, of which all might avail themselves. It is one of the most frightful sources of corruption that disfigures all legislative bodies. It violates one of the dearest principles established in the Bill of Rights, that the legislative and judiciary departments should be kept separate and distinct. Legislating upon private bills in individual and special cases, is nothing more nor less than the Legislature erecting themselves into a judiciary department; they make the law and adjudicate the case, from *ex parte* evidence too. How many frauds are thus perpetrated every day upon the government of the United States? This system has a very demoralizing effect upon the community.

At the suggestion of the President, Mr. Evans withdrew his amendment for the present. The question being on the adoption of the 6th section as amended.

Mr. *Hogg* said: I have, Mr. President, a good deal of dislike to attempting to exhibit my sentiments here, when I know them to be so very unpopular, but however disagreeable the task may be, I feel it a duty which I owe to myself and a portion of the constituents whom I have the honor to represent upon this floor, to make some effort to oppose the total inhibition of banking privileges within the State of Texas. Believing the provisions of this section to have some bearing upon the subject, I will offer an amendment which will test the question now, and give me an opportunity of expressing my views with regard to it.

[He offered an amendment, in substance, providing that nothing herein should be so construed, as to prevent the establishment of a State Bank, when it should become necessary or expedient.]

I believe, sir, (he continued) that all freemen are entitled to the benefits to be derived from banking institutions, whenever the majority of the people shall deem it advantageous to the community. I am aware that banking is very unpopular at this time, with, perhaps, a majority of the people of Texas. But, sir, I wish it understood, that I am opposed to inserting any thing in this Constitution which will inhibit banking, at least so far as to preclude the establishment of one State Bank within the State of Texas. And I believe, although the people are now opposed to these institutions, that the time will arrive, when the people who come after us will be in favor at least of a State Bank. If this Convention is of opinion that the system is injurious to the welfare of society at present, or will be so in its operation upon posterity, I suppose it has the privilege of inhibiting it entirely. But I think this would be going too far. The privileges connected with the existence of these institutions may have been abused by the management of politicians in the United States; they may have been turned to injury. But I believe that banking privileges, as they have existed in the United States, have been a blessing for a long period. Banking and the credit system have advanced society there at least half a century. By the credit system and banking privileges our mother country has gone forward, made internal improvements, perfected steamboats, and constructed railroads. But for them, I believe it is probable that the Mississippi would now be navigated by pole boats, and not a steam ship would be seen flitting across the Atlantic ocean in fourteen days, in place of the tedious three months' passage of former days. Although the democratic party in the United States have succeeded in destroying the United States Bank, and have made all banking unpopular for the present time, yet I am unwilling to exclude my children and those who may come after me, from the exercise of those privileges enjoyed by my fathers. If they have been abused and converted to injury instead of benefit, it does not therefore follow, that they are injurious in their tendency. Any gift or institution designed to minister to the comfort and well-being of mankind, may be so abused as to become a curse. I am well satisfied that if we inhibit banking and the credit system, for they go hand in hand and cannot be separated, if we establish an up and down cash business, and a currency of gold and silver, the poor will remain poor, and the rich will remain rich, from generation to generation. Sir, I repeat it, if you establish this cash up and cash down system, the poor man's son will forever be compelled to remain in an inferior rank in life; whereas, under the operation of the credit system, and its attendant benefit, banking, the enterprising young man would emerge from his original poverty and obscurity, and vie with the sons of the richest and most opulent. I believe, again, that it would be impolitic for this Convention to pursue this course, because it would have a tendency to create a prejudice against us on the part of a powerful party in the United States, which, it is well known, has made the support of these institutions a prominent policy. Now, sir, though the whig party seems to have been put down, and the democratic party has prevailed in the American Union. a pait of whose present creed it is to denounce banking, shall we, therefore, take it for granted, that it will never be advantageous to the people of Texas; that we are to be forever confined in our commercial operations to a metallic currency, a currency which I venture to assert is becoming the most spurious and corrupted ever known?

I do not appear here as the advocate of banking at the present time. I am willing to see this metallic currency fully tested; I am willing to see the principles of the democratic party, in this respect, entirely carried out; let them go to the bottom of the wheel. I am satisfied that the whole commercial world has been wrecked and thousands of honorable and industrious men made vagrants thereby. But inasmuch as the suffering and ruin thus caused have reached their utmost limit, I am willing to let things go on so for a few years, until the people shall become dissatisfied, and look back with longing eyes to the privileges of which they have been deprived. And when our children, in days to come, shall be of opinion that banks will be a blessing to them, I for one am unwilling that they shall find themselves tied up by our action at this time. It is very difficult to change the constitution of a country, it will necessarily require the concurrence of two-thirds of the people. Then I am unwilling to establish a principle here, which will debar them from the exercise of these privileges. If we ourselves, or our fathers have abused them, it is no proof that our posterity will do so. I am unwilling to set myself up as an infallible judge of what will be practicable or desirable for future generations. In establishing an organic law, which ought only to embrace the fundamental principles of government, I am unwilling to go abroad and gather up all the impositions ever practised upon mankind, for the purpose of providing against them in the Constitution. This system may be now, in our opinion, impracticable and injurious; but our children, it seems to me, should be entitled to free action thereon. In undertaking to control or curb them, in any thing not necessary to the perpetuity of the great principles of republicanism, I say we are going too far, and further than I am willing to do. And I wish to record my vote in opposition to any such interference with the rights and liberties of the people.

Mr. Hogg withdrew his amendment, to come up after section 28.

The question was then taken on the 6th section, as amended, and adopted by the Convention.

In section 7th, 1st line, on motion of Mr. Love, the words "for the state at large" were striken out; also in 7th line, same section, the word "each" was stricken out and "such" inserted, and the last "such" in the same line, was stricken out.

Mr. Forbes moved to insert in 5th line, after the word "county," the word "officer," so as to read "county officer." Carried.

Mr. Lipscomb offered the following amendment as a proviso to the 7th section.

"Provided, however, that the provisions of this section shall only apply to such offices as may be filled by the qualified voters of the county or district."

Mr. Howard moved, as a substitute to Mr. Lipscomb's amendment, to strike out all of the section after the word "law" in 3d line.

Mr. *Everts* said: He should oppose any probation, as to county residence, believing that it would, in a great many instances, exclude individuals who may have moved from one county to another, but who have lived in Texas a great many years.

Mr. *Evans* said: He hoped the latter part of the section would not be stricken out. He had seen the greatest abuses prevail for the want of this salutary provision. Any county or district in any country in the world, and especially in a republic, has sufficient integrity and talent to fill all the offices needed in the county or district. Unless this is retained (with the large patronage we have given the governor) he may send a favorite to every county, to fill its offices.

On motion of Mr. Gage, the 7th section, together with all the amendments of the same, was referred to a special committee.

Messrs. Gage, Howard, Ochiltree, Mayfield and Everts were appointed said committee.

In section 8th, Mr. Caldwell moved to strike out all after the word "Constitution," and insert "shall be fixed by the Legislature;" which motion was lost.

The section was then adopted without amendment.

Mr. Cunningham moved to strike out the 9th section.

Mr. President *Rusk* hoped it would be stricken out. He saw no reason for inserting it here: there might be some peculiar necessity for it in the Constitution of the State of Louisiana.

Mr. *Van Zandt* said that this provision was not confined to the Constitution of Louisiana. He believed it would be found that the Constitution of Alabama went still further; and those of some other States had a similar clause.

Mr. *Brown* said: That he should vote for the section as it stood, and for this reason. Although in ordinary cases of absence, the fact of citizenship is to be determined by the intention to return, or not to return, yet this provides for a different case. The Constitution of the United States requires the officers of the general government to be residents at the seat of government. It would not do to affect that fact with the intention to return or not to return. He thought all controversy on this point should be silenced; and as he believed the only way to do so was to frame a rule for those cases for which there is no recognized rule now.

Mr. *Cunningham* thought its effect would be rather to create doubts. It is only contained in one or two of the State Constitutions. Since the formation of the United States government, persons from all the States, holding office under the United States, have been in the habit of residing four or eight years in Washington city, and thence returning to their own homes, without losing their residence. This is the established construction in all the other States, without a constitutional provision.

The motion was lost and the section adopted.

In section 10, Mr. Mayfield offered the following amendment:
After the word officers," insert "who may wilfully neglect the performance of any duty assigned by law;" which was adopted: and the section, as amended, was adopted.

On motion of Mr. P. Rusk, the 11th section was stricken out.

In the 12th section, Mr. Forbes offered the following amendment:
In 3d line strike out "as member of the Legislature," and insert "to," so as to read, "eligible to hold or exercise any office of profit or trust under this state;" which amendment was rejected, and the section adopted without amendment.

Mr. Hicks moved to strike out the 13th section. He said it seemed to him that the object had already been provided for by the laws, and had been for the last three hundred years.

In 2d line of said section, Mr. Evans moved to strike out the words "for public officers," which motion was lost.

Mr. Cunningham offered the following amendment:

Strike out in 1st line, after the word "who," the words "are now or," and insert, in the 2d line, after the word "become," the words "after the passage of such law," which was rejected.

On motion of Mr. Forbes, the words "are now or," in 1st and 2d lines, were stricken out; and, on motion of Mr. Rusk, the 13th section, as amended, was stricken out.

Mr. Horton moved to add to the 14th section, the following: "and for the erection of a penitentiary at as early a day as practicable." He thought it would be of great use. It will improve those who have trades; and those who have not, will learn them very easily. It will thus prove a benefit to to society, or at least to some neighborhoods.

The amendment was adopted.

Mr. Young moved to strike out the words "civil and." Lost.

Mr. Henderson moved to strike out the section.

Mr. *Burroughs* said: That he was in favor of striking out the section as amended, not because he was opposed to the objects intended to be arrived at; but because he thought the Convention, in inserting provisions of this kind, was exercising privileges which it ought not to exercise. He thought that the Legislature had full power to act upon all subjects not mentioned or provided for in the Constitution.

Mr. *Horton* said: By striking out the 14th section, it was true, you would leave this matter entirely to the Legislature. But he hoped the section would be retained as it was, for the purpose of securing the establishment of a penitentiary in the republic of Texas.

Mr. *Lusk* said: That the people in his county were desirous to have it inserted in the Constitution, that the Legislature shall provide by law for a change of venue in all cases, and for the erection of a penitentiary.

Mr. *Caldwell* said: When we say that the Legislature *shall* do so, we are putting ourselves in the place of the people, directing their representatives what they shall do. Their responsibility will be to the people, and not to us I would leave it to them to say whether they would have a penitentiary. Whenever the time shall come when it is necessary to make such a provision, the Legislature will do it, without any direction from us.

Mr. *Hogg* said: I am in favor of inserting something in this instrument, declaring that the Legislature *shall* provide for the erection of a penitentiary as soon as possible. I believe it is practicable; and I believe that the people of the country are favorable to it, that they wish this species of punishment to be adopted. I want to see it provided for somewhere in the Constitution.

The ayes and noes were called upon the motion to strike out, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of J., Bache, Burroughs, Caldwell, Clark, Cunningham, Henderson, Kinney, Latimer of L., Latimer of R. R., Mayfield, Miller, Navarro, Runnels, Smyth, Tarrant and White—18.

Noes—Messrs President, Armstrong of R., Bagby, Baylor, Brashear, Brown, Cazneau, Darnell, Davis, Evans, Everts, Forbes, Gage, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett. Jones, Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, M'Neill, Parker, Power, Rains, Scott, Standefer, Ochiltree, Van Zandt and Young—36.

So the motion was lost.

Mr *Darnell* said: He should propose an amendment, making it the duty of the Legislature to pass a law for this purpose, to say that they *may* do it. To say that the Legislature may have the right to do so, cannot be an infringement of any right. If we say they *shall* do it, they are bound to pass such a law; and very possibly the people might be opposed to it. But he wished this Convention to fix the rights of the people of Texas so far as the change of venue was concerned; it should not be left in the power of the Legislature to deprive the people of that right.

Mr. Darnell moved to strike out the word "shall," and insert the word "may," so as to read " the Legislature may erect a penitentiary, &c. Motion lost.

Mr. Mayfield moved to insert, after the word "penitentiary," the words " and a public school in each county, for the education of the poor."

Mr. *Van Zandt* said: That he should be in favor of the amendment in a proper place, but he did not think the *poor* and the *penitentiary* should go together!

Mr. *Young* said; That he was in favor of establishing schools for the education of the poor, whenever we get able to do it; but this amendment was out of place here.

On motion of Mr. Forbes, the Convention adjourned until half-past 8 o'clock, Monday morning.

Monday, August 4, 1845.

Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Gage, in behalf of a special committee, made the following report:

Committee Room, August 4, 1845.

To the Hon. T. J. Rusk,

President of the Convention:

Your select committee, to whom was referred the 7th section of the General Provisions of the Constitution, have had the same under consideration, and have instructed me to report the following amendments, and recommend their adoption:

In the first line, strike out the words "at large," and strike out the entire section after the word "law," in the 3d line.

[Signed.] D. GAGE, Chairman.

Which was laid on the table, to come up among the orders of the day.

Mr. Hemphill offered the following resolution:

Resolved, That the Commissioner of the General Land Office be requested to report to this Convention the amount of land embraced in the certificates for head rights, issued by the various boards of land commissioners of this Republic, the amount of land necessary to satisfy certificates reported as genuine and legal; also the amount of land called for by certificates not recommended as genuine; the amount of land necessary to satisfy scrip, military warrants, and other incohate titles issued by the government of the Republic, and the quantity of the public domain, which will remain after the claims already issued are surveyed.

On motion of Mr. Van Zandt, the rule requiring the resolution to lay on the table one day for consideration, was suspended, and the resolution was adopted.

Mr. Evans offered the following resolution:

Resolved, That a committee of five be appointed, whose duty it shall be to enquire into and report to the Convention the condition of the land system in Texas, the amount of unappropriated domain, the amount of appropriated domain, the various kinds of land titles, the various kinds of land claims, located and unlocated, the probable amount of forfeited lands, the probable amount of claims owned by foreigners.

Which, on motion of Mr. Van Zandt, was laid on the table for the present.

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and humanity and every thing else. He proposed merely to give the Legislature the power to make such arrangements, that persons hereafter separating mothers and children should be governed by some known rule of law.

Mr. *Hogg* said he was much pleased with the principles of humanity advocated by the gentleman from Galveston upon this subject. He would like to offer a section in lieu of this; but had three sections upon the subject of slaves, which he wished to introduce after the 34th section, immediately before the sections relating to impeachment. They were founded upon principles of humanity. Though not entirely covering this provision relating to families. He did not think he could vote for this section, although he would like to do so: as he thought it impracticable.

Mr. *Jones* said: He hoped the motion would not prevail. He should be pleased to see something of the kind among the provisions of the Constitution. He had discovered the necessity in his own immediate neighborhood for some action upon this subject. He had recently seen two sets of negroes sold, and for the purpose, probably of procuring a little more money by the sale, several little children, three years old and upwards, had been separated from their mothers, and wives taken from their husbands. This practice causes negroes to run away, and they are unusually punished. Some degree of humanity should certainly be extended to negroes in these cases; and he wished the Legislature to make some provision for that object.

Mr. *Forbes* said: He would like to see some humane provision upon this subject engrafted in the Constitution; but he thought the slaves were frequently benefited by being separated from their parents after arriving at a certain age, as was the case with free persons. If the age were specified, or some limitation inserted, he would vote for such a provision with a great deal of pleasure.

Mr. *Ochiltree* said: I hope, Mr. President, the motion will prevail. I have stated before, what perhaps no other gentleman upon this floor will say of himself, that I am a perfect fanatic upon the subject of slavery. Yet I may say, with truth, that although I was brought up on a plantation with slaves, although since I have been of an age to own slaves, I have never been without the possession of one or more. I have never struck a slave of mine a blow in my life. I correct them as seldom as any man living; and it has been a task to me to support them as long as I have. I know the motives which actuate the gentleman from Galveston; I well know his humane feelings. Not so, however, with another motive which I am induced to believe operates upon the minds of some gentlemen friendly to the insertion of this section; it is the desire of propitiating a power potent for mischief in the Congress of the United States. When some of us had the audacity to admit our fears upon the subject of abolition, we were laughed at We were told that interest would always prevent any evils to us from that species of fanaticism. And now we hear this section spoken of out of doors, and universally supported as a lure to be held out to secure the votes of the northern people for the reception of our Constitution. Yes, although it seems it is their interest to do us no harm, yet we find every disposition manifested to propitiate their consent and kindness of feeling, to beg of them our entrance into the Union on the best and most favored terms consistent with their notions. I wish not the word *slaves* to be inserted in the Constitution. For my part, I wish neither to provoke nor to propitiate them That is my feeling upon that subject. I am opposed to this provision on the ground of expediency. I do not believe it practicable to pass a general law which will secure the objects contemplated, without operating oftentimes injuriously to the best interests of owners. I will state an instance. Had I not acted from motives similar to those which actuate the gentleman from Galveston upon this occasion, I might now have been much better off. I have three slaves, two of them a father and mother, the property of my ancestor, which came to me endeared by all the recollections which will grow up between master and slave brought up together from childhood, and tended in infancy by the same black "mammy." They had a child, the solace of their old age, their Benjamin I may call him. He was reared in my family with my own little children. I early saw that the indiscreet partiality of his parents was encouraging him in a course which would ultimately result in his ruin: and frequently admonished the father that he was spoiling his boy. Several of my friends almost persuaded me to sell him, but my feelings revolted at the idea; I could not bear the idea of separating him from his parents. It was the worst act of my life that I did not sell him, and take him away from them at that time. That child has been recently concerned in the commission of a high crime, which has involved his father and mother, and perhaps their lives will pay the penalty. If he had been sold to some benevolent owner, and withdrawn from the deleterious influence of his father's partiality, he would, perhaps, have been taught the necessity of obedience in time to save him from ruin. His father and mother might have grieved for the moment but time would have wrought its anointing influence, and the wound would have healed. This is one instance in which much evil might have been prevented by indulging the privilege of the owner, and parting the mother and child. I yielded to the same influence which operated upon the gentleman from Galveston, but it would have been far better had I done otherwise I once read an admirable epilogue by Goldsmith, in which he describes a genius as descending to earth and accompanying a traveller who was crossing a roaring flood with his boy. The genius snatched the boy and threw him into the raging flood below. Call you this a work of good? asked the distracted father. Yes, replied the genius; for you had your feelings placed upon your child, instead of your God. And it is better for you both to be separated, for you cannot know what crime he might have been led to commit Much might be said, I am aware, upon the humanity side of this question, but a great deal more upon the expediency side.

We have had upon our statute book already a law which exempted slave property from execution; and I am not free to say, had I been a member of the Congress which passed it, that I should have voted against it; but that law has done more injury in several counties in Texas, than any other. It was looked upon as a direct attempt, not to indulge a principle of humanity, not to preserve the link unbroken between master and slave, but rather as a contrivance to evade the rights of creditors Give this authority, and if in the course of time a great pecuniary depression should occur, I am confident the Legislature would overleap the spirit of the provision, and under the shield and buckler of humanity, would pass a law to cover the grossest frauds on the rights of creditors. I do think we should trust every thing to the feelings of the master. No power ever yet compelled an owner to sell his negro slave, so far as my knowledge goes, but the stern hand of necessity. I never yet knew an instance of the kind, unless the master was operated on by necessity; either that of preserving other slaves from the contagion of crime, or the necessity of debt. But, says the gentleman from Galveston, this action is prospective. He who credits the slave owner, will do it with a full knowledge of this contingency. This is a good argument; but why not strike at once at the basis of the credit, and say that there shall be no collection of debts whatever; for if a man credits another, it is then with a knowledge of this contingency. But such a course would be found detrimental to the best interests of society. I trust this section will be stricken out; first, because it is exceedingly inexpedient, in my opinion; secondly, it ties up the hands of the owner from selling his slave for purposes of good; and thirdly, because it is a mask for the fraud and corruption of the future Legislature of the State.

Mr. *Love* (with leave) said: That he had no other motive than that of humanity; to propitiate the abolitionists or any other class, was not a habit of his life; if he had any fault in political matters, it was that of being too independent. He could not see any evil to result from this provision; the state of things which has been conjured up could not by any possibility exist. He would leave it entirely to the wisdom of the Legislature to provide against the case described by the gentleman from Nacogdoches. He thought he was a bad master who would permit a father to corrupt the morals of his son; and was willing that the law should provide for taking slaves away from such a master, and giving them to a better.

It is our duty to be humane at the same time that it is our duty to be just. And he would not permit inhumanity towards a slave any more than towards a child; but would place them on the same footing.

He had offered this provision from a sense of duty, to correct what he considered to be a great evil. Whatever might be our feelings with regard to this matter, there was no man who would safely get up and say he would be willing to tolerate any species of inhumanity. A bad and cruel master is despised and shunned by every honorable man in the community where he lives. If we have the power thus to ameliorate the condition of the slave, the institution will be stripped of many of its horrors; we shall generally increase the moral tone in our slaves, until the time may arrive when necessity, interest, or something else, will free us entirely from that species of population. The period of this institution is governed by the law of population, and that time will come, no doubt; but until it does, let us endeavor to ameliorate their condition, and make them as comfortable and happy as possible.

Mr. *Henderson* said: He should vote for striking out this section, because the Legislature undoubtedly has the power to do all that we say here they may do. It is a well established principle of law in all the States, that an administrator or sheriff, when it becomes necessary, may in his discretion, sell them all together. It is generally exercised; the Legislature, however, may enforce it upon masters.

Mr. *Van Zandt* offered an amendment: strike out the words "families of," and insert "mothers and children under ten years of age." If that amendment were adopted, he said, he would vote for the section.

Mr. *Howard* said: If that amendment is adopted, I shall vote against the section. I would rather see it striken out altogether, than remain thus emasculated. There are two sorts of people that go crazy upon this subject; the abolitionists of the north may take the hydrophobia and froth at the mouth on one hand; and on the other, some of the southern gentlemen, the moment the subject is mentioned also go mad. I shall not permit my vote to be governed by prejudice; I shall act independent of abolition, as becomes what I conceive the proper character of legislators framing the fundamental law of the land. What is the question? Is the separation of families an evil and inhuman? If it is, it is a proper object for legislation; if not, it should be left untouched; if it is, we should regulate it so as to reach the evil, and not putter over it to tickle the public feeling, right or wrong. I believe, again, that the owners of slaves in this country are of one opinion, that the ruthless sundering of family relations is an evil which ought to be discouraged. Because the abolitionist says a thing is good or evil, I will not take the opposite ground; but will act as becomes an independent man. I shall go for this provision for several reasons: first, because it is intended to correct that which all admit to be an evil, the cruel separation of parents and children, and of families; secondly, because I believe it will strengthen the institution of slavery. All the clap traps about abolition will not affect me. And I will remark further, that the motive alluded to by the gentleman from Nacogdoches, is not an improper one to influence any man upon this floor. If you believe that merely by correcting that which is an evil and a great evil, an objection, which is sound, so far as it goes, and urged as such by the civilized world, can be removed, I say, remove it; I say there is no statesman, no legislator, who would act upon a different principle, from mere prejudice, because an enemy may happen to attack that evil. Now, the whole question is here: is it an evil, unnecessary to the existence and even injurious to the institution of slavery; and is it in our power to correct it? If so, we are bound to correct it; and if we do correct this which the world regards as an evil, which slaveholders themselves regard as an evil, I say it will be an act worthy of this body, an act which will reflect honor and credit upon this Convention and upon the State of Texas itself; and believing that the Legislature will have wisdom enough to guard against any injurious tendency in the measures which they may adopt; with this view, I shall vote for the section.

The amendment was rejected.

Mr. *Hogg* said he should vote to strike out, for the purpose of having something inserted, at a proper time, which would fit the case

Mr. *Lewis* said, that having been a member of the committee reporting this section, he felt it his duty to say that he did not agree with the gentleman who proposed it, nor with the committee by whom it was adopted. He should briefly state that he was in favor of striking out the section: first, because he thought it entirely competent in the Legislature to pass laws which the protection of that description of property might make necessary, to prevent cruel and inhuman treatment; in the next place, because the Legislature, as he thought, should not have the power to pass any law which would prevent the master from making such a disposition of his property as would be advantageous to himself. Again: because in the case where a high public officer is called upon to dispose of negro property, to satisfy the debts of the owner, there should be no law by which he would be prevented from securing the most advantageous terms for the creditor and owner of the property. He thought that the Legislature had the entire control, so far as they should have, over this species of property, of which all recognize the absolute ownership as vesting in the holder. If we confer any right upon the Legislature to qualify or interfere with the ownership, they may at once strip the owner of his property.

The ayes and noes were called upon, striking out, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Kinney, Latimer of R, R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Rains, Runnels, Scott, Ochiltree, Van Zandt, White and Young—43.

Noes—Messrs. Davis, Evans, Howard, Hunter, Jones, Love, Navarro, Parker, Power, Smyth, Standifer and Tarrant—12.

So the section was stricken out.

Mr. Hogg offered three additional sections, to come in after the 18th section, as follows:

SLAVES.

The General Assembly shall have no power to pass laws for the emancipation of slaves, without consent of their owners, nor without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons, as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: Provided that such slave be the bona fide property of such emigrants: Provided also that laws shall be passed to inhibit the introduction into this state of slaves who have committed high crimes in other states and territories. They shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity, to provide for their necessary food and clothing, and allow them to rest from labor on the Sabbath or Lord's day, known as Sunday: to abstain from all injuries to them extending to life or limb: and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves taken from such owner, and sold for the benefit of such owner who will not comply with such law or laws. They shall pass laws to prevent slaves from being brought into this state as merchandize only.

Sec. 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the General Assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 3. Any person who shall maliciously dismember, or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed upon a free white person, and on the like proof, except in case of insurrection of such slave.

On motion of Mr. Evans, the above sections as offered by Mr. Hogg, were referred to the committee on General Provisions.

In the 20th section, Mr. Henderson moved to amend by striking out all after the word "they" in the 5th line, and insert the words "are at the time of the adoption of this Constitution by the Congress of the United States:" which was rejected.

Mr. Brown moved to strike out all after the word "Constitution" in the 5th line. Lost.

Mr. Jewett offered the following amendment:

In section 20th, 3d line, insert after the word "divested" the word "forfeited."

Which was adopted.

Mr. Everts offered the following amendment:

"Nor any surveys, claims or titles to lands which have been rendered or declared null and void by the said Constitution and laws," to come in after the word "Texas" in the 4th line.

Mr. *Caldwell* objected to that amendment: if adopted, it might reach further than it was intended to, or than the gentleman had any idea of. He believed there were many who were justly, legally, and honestly entitled to land, who had not at present the scrip of a pen by which they could establish their claim. Some have certificates which have been rejected by the board of land commissioners, and the courts are now closed to them. Are we to place matters in such a position that these honest claimants can never obtain their rights? There are other individuals entitled to land who have never made application. If they have forfeited their rights by their negligence, still if the Legislature should see proper to extend to them the privilege of establishing their rights to the public domain, he did not wish to restrict them.

Mr. *Armstrong* thought the object was neither to take away rights, nor to give them, but to prserve them as they are now. The amendment says "*by the Constitution*: it does not prevent the action of the Legislature

Mr. President *Rusk* said: It does not circumscribe the authority of the Legislature. It is necessary to be remarkably careful, or some of these fraudulent claims might be revived by the Constitution.

Mr. *Caldwell* said he was aware that he was looked upon with some degree of suspicion, in the discussion of any matter here relating to lands. But he could say as to these certificates, that he did not hold one dollar's worth, nor had he any property which would come under the denomimation of forfeited or escheated property. At the same time, he was disposed to do justice to every individual. Where vested rights should come under discussion, he should endeavor to do justice to all parties.

Mr. *Kinney* said: The more I hear this matter discussed, the more I am convinced that the Legislature ought to deal carefully, and with great caution upon the subject of vested rights. I believe that by the adoption of the amendment offered by the gentleman from Robertson, a great many worthy citizens will forfeit their rights to their lands in consequence of inability to comply with the laws. Several instances of this kind have come under my own observation. In the year 1840, several persons were taken prisoners in the vicinity of the point at which I reside, and taken to Mexico. They were entitled to head rights, and I have heard it remarked since they returned, that some of them had forfeited their right to lands in consequence of their not being here to prove up their claims. That would be very unjust. Where a man has been placed in a situation unsought by himself, where he has not been able to comply with the laws of the country, when he has been in the service of his country, it would be a hard matter that his rights should be taken from him, or that he should forfeit them by being a prisoner in Mexico. There are many other instances. Many of those who have been residing in the western country, have never been in a condition to prove up their head rights. If I have resided there for years, and have never asked for my headright, nor got it, that does not prove that there is no justice in my claim. I hope the Convention will try to be careful not to take rights from those who have earned them by their services, their blood and their exposures, in consequence of putting some little clause in the Constitution we are about to adopt, which may divest them of these rights. Many of those who live there came at an early day, and have grants of land from the government of Mexico; some to the amount of eleven leagues. I have heard it said, since I have been at Austin, that eleven leagues is too much for any man to have. When they came to the country, land was comparatively valueless. I would ask those gentlemen, if they had come at the early day, and by their residence and services had made their lands valuable, whether it would be right that they should be taken from them? It has been remarked to me that Mexicans holding large tracts of land are not entitled to them, because they have become valuable, and the holders have not done any thing for the independence of the country. Ask them how they know that, and they say because they run off. They do not consider, that they were driven off. Many of them were born and brought up upon their lands, and their very residence and occupancy have made them valuable. And I have known some instances of families, the heads of which have been killed in the service of Texas, and their lands have been located, and their families left in destitution and want. Is it just because they have been destroyed in fighting the battles of Texas, that the rights of their progeny should be thus taken away? Is it right that their children should be left in a destitute situation, because they are *not left* here to plead for their rights? I consider the argument upon this subject incorrect, and misplaced, and fear that a great deal of injustice may be done inadvertently. It seems to me that the section is better in its original state than any amendment can make it. I believe that these matters should be investigated by the judiciary of the country, that both sides should be taken into consideration, and that we should place no clause in this Constitution taking away privileges previously existing.

Mr. *Lewis* said: I apprehend that every gentleman here is acquainted with the difference in meaning before the words *forfeited* and *divested*. A right may be forfeited by the operation of the law: but it cannot be divested except by an investigation of the matter before a competent tribunal and a judgment thereupon. Now I am aware of the existence of many rights which have been forfeited, but have not been so declared by the decision of a judicial tribunal, which, I *think*, are founded in equity and justice, and should be revived again by the Legislature of the State. For instance, there are many persons in possession of head right claims, whose certificates have been rejected by the Travelling Board of Land Commissioners, and who, having neglected to apply to the proper judicial tribunal, are now without remedy, unless they can obtain it by the act of the Legislature. Congress, at their last session, refused to pass a bill introduced for the purpose of extending the law. If we now close the door to the resuscitation of these rights, we shall work great injustice to that class which the laws should protect and support, those who have not been able to apply to the judicial tribunals before the expiration of the laws by which they could have done so. Let us not divest these rights by too great an anxiety to get rid of fallacious land claims.

Mr. *Howard* said: As the section originally stood, I was willing to vote for it. Now, sir, I hold this to be an obvious principle, by which each member of this body is bound to be guided, that I am here to legislate generally for the community; for the purpose of making general laws, and not rules and regulations in favor of my own property. I am willing to go for any provision which will operate for the general good, any provision properly belonging to the fundamental law of the land; but I will not vote for any which is intended to secure or to annul any particular private claim in the community. We have no right to take such action; because, when we do so, we assume judicial powers; we adjudicate a man's rights without any notice, without allowing him to confront those who assail his rights with proof, without observing any of those rules which control and govern in the investigation of such rights. This body is not constituted for any such purpose; it has neither legislative nor judicial powers, properly speaking. and if it is intended to adjudicate the private rights of individuals, give them notice, let them have their witnesses here; but do not slip in surreptitiously a principle which will operate partially and prejudicially to particular rights in the community. It strikes me as an enormity; as a gross fraud upon abstract rights, to attempt any such adjudication. We are bound to leave rights where we find them, to leave them to the judiciary. What right have you to say that a survey made at one time and in one form, shall prevail over a survey of another form and another time; and thereby preclude the rights of one man and give another a right which the judicial tribunals of the country might not give him? I deny the existence of the power, and if we had it, I say it would be doing great injustice to exercise it. For myself, I have no interest in Texas lands above a few acres in a town lot. But I must say that the amendment made here will cause me to vote against this section. In my opinion, it is pregnant with the grossest injustice. Have you a right to judge whether a man's property it forfeited or not, whether a particular class of land claims shall be maintained or rejected? If you do this, take my word for it, this Constitution will never pass the Senate of the United States. I am willing to vote for the original section; to go beyond it, would be transcending the powers of this body, establishing a principle wrong in itself, usurping judicial as well as legislative functions. I shall not only vote against it, but enter my protest, if it pass this body.

Mr. President *Rusk* said: We have heard a great deal upon the subject of adjudicating private rights, and I agree with every word which has fallen from the gentleman from Bexar, with regard to the Convention erecting itself into a judicial tribunal and determing such rights. But who has attempted anything of the kind? What is there here to authorize such a supposition, except the word "forfeited," which embraces matters of another description; and as I voted carelessly for it, I shall move a reconsideration. One of the main causes of the revolution was the granting of twelve hundred leagues of land by the Legislature of Coahuila and Texas, by means of duplicate and triplicate certificates, located all over the country. These rights have been declared null and void by our Constitution and laws; and does any gentleman desire to reinvest them, to open the doors again to fraud of this nature? This is a complicated matter. There was a great deal of circumlocution in obtaining these grants, and a good many in this country; and it requires a little circumlocution to head these enormous and stupendous frauds attempted to be fastened upon the country. The amendment adopting the word "forfeited," is a different matter, and can very well stand in a section by itself. I had some hand in drafting this section: and I know the important bearings it will have upon various interests in this country. I see not a single word which goes to divest any individual of any rights which he may have under the laws and Constitution of Texas; if it did so. I would be the last man to vote for it. I see nothing here which wars at all against private rights. If gentlemen were familiar with the history of the country, they would see the necessity of circumlocution to prevent some of the greatest frauds ever practised, the Yazoo speculation in Georgia not excepted. Again: with great respect for the opinions of the gentleman from Bastrop, I am confident that this section will not do any thing to prevent the Legislature from taking the action to which he alludes. I have never entertained any suspicion of that gentleman in connection with the subject of these certificates: I have always had the highest opinion of him, with regard to his private actions, as well as his public acts as a member of Congress. If he will read the section carefully, he will see that every thing will remain precisely as before the adoption of the Constitution; in a situation where the Legislature could grant relief, or establish tribunals for the purpose. Under these circumstances, with the word "forfeited" stricken out, I look upon this article as placing down the hand of this Constitution as the Constitution has done before, upon a stupendous mass of fraud I think, with the amendment of the gentleman from Fannin, it can do no injury.

Mr. Rusk then moved to reconsider the vote which adopted the amendment inserting the word "forfeited".

Mr. *Van Zandt* said he was not satisfied that there was no such danger as seemed to be apprehended, in the word "forfeited". With a view to reflection, he would move an adjournment until 4 o'clock. Lost.

Several other motions for adjournment were made and lost.

Mr. *Cunningham* said: I hope the vote will not be reconsidered. I conceive this to be a matter of very great importance. When the Constitution was formed in 1836, there were two or three subjects with regard to which the persons who composed the Convention of that time, thought they ought to exercise the judicial powers spoken of by the gentleman from Bexar. I believe they had the right to do so; and I believe this Convention has the right to exercise legislative or judicial powers. I believe that when a fraud has been committed by either department of the government, the only remedy is in the Convention. That this was the only remedy in the case of the Yazoo fraud, was acknowledged by the greatest jurists in the United States When the Convention of '36 met, the members of that body thought there existed some legislative or executive fraud committed under the government of Coahuila and Texas, which needed their repairing hand. They therefore did exercise a judicial power with respect to that fraud, and they had a perfect right to do so. They went further: and declared that all persons, who left the country for the purpose of avoiding a participation in the struggle, or avoid or assisted the enemy, should forfeit their right to lands. They did not declare that these should be null and void, but that they should forfeit them. In the case of the fraud known as the

John T. Mason fraud, they declared that the title should be null and void. If this clause in the Constitution is adopted without that word "forfeited", only those lands which have been adjudicated, will belong to the Republic of Texas: because no other lands are divested. The people in my county and many other counties are very much interested that those rights which have been forfeited under the Republic of Texas, shall remain forfeited, and that the State should have the right which the Republic once had. When we repeal that Constitution, we repeal the particular act which forfeits those lands.

Mr. *Young* said: I believe the word should not be stricken out. I look upon this as a very important matter. A great deal has been said in relation to the amendment, and the effect which will be produced by that amendment. The term "forfeited" there, as I apprehend, means nothing more nor less than that these claims or rights of action forfeited by the Constitution and laws of the Republic, should not be again revived. In the section of country where I reside, the people, or a particular portion of them, have a very considerable interest with respect to reinstating rights which have been forfeited under the Constitution and laws of the Republic. Many claims and rights to actions by no means of little importance have been forfeited under these laws and that Constitution. The only object of inserting this amendment is, that these claims which have been barred or killed off by the Constitution, shall remain dead.

On motion of Mr. Jewett, the Convention adjourned until half-past 3 o'clock, P. M.

Half past 3 o'clock, P. M.

The Convention met pursuant to adjournment, and took up the amendment of Mr. Jewett to the 20th section, 3d line, upon the motion of Mr. Rusk to reconsider the vote adopting the word "forfeited".

On motion of Mr. Lipscomb, a call of the Convention was made, and on motion of Mr. Armstrong of J., the further call of the House was suspended.

The vote was then taken on the reconsideration, by ayes and noes, as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Baylor, Burroughs, Caldwell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hogg, Howard, Hunter, Irion, Jones, Kinney, Lewis, Lusk, Lipscomb, McGowan, Miller, Moore, Power, Runnels, Scott, Smyth, Standifer, Tarrant and Ochiltree—32.

Noes—Messrs. Armstrong of R., Clark, Cunningham, Hicks, Jewett, Latimer of L., Latimer of R. R, Lumpkin, McNeill, Parker, Van Zandt, White and Young—13.

So the vote adopting the word "forfeited" was reconsidered.

Mr. *Howard* moved to refer the 20th and 21st sections of the General Provisions, and also the 4th section of the schedule, to the committee on the judiciary, and addressed the Convention as follows, in support of the motion:

I see a disposition, Mr. President, to disfigure the section before the House by amendments. I am willing to go as far as I can, consistently with the principles of international law: as far as I can, without violating the Constitution of that Union into which we are seeking to incorporate ourselves. But I am unwilling to go any further, because it would be wrong in itself, and because I know it will contribute to the defeat of the measure of annexation. It is a plain principle of international law, too well recognized to be cavilled about, that when States change by revolution their form of government, the rights of private property remain unimpaired. This is laid down in all the writers upon international law. So far as I can go, I am willing to go; and I esteem the judiciary committee the proper committee to report to the House the principles which we may rightfully adopt upon this subject. I do not think we can hurry over a position of this kind, or that we ought to rush precipitately over a principle which would be derogatory to any government, and must be injurious to the interest of the great question. I am willing to go to the extent of the section immediately before us: it is only declaratory of a principle of law. But when you go a step further, and say that one species of survey shall prevail over another, that one species of title shall be higher than another, you overstep your authority, violate a great fundamental principle of the law of society.

With regard to the 21st section, about that with lawyers there can be but one opinion; that it is, as it stands, a clear violation of every principle of national law, and a palpable violation of the Constitution of the United States, and the present existing Constitution of Texas. Not only that, but it will have a directly contrary effect from that intended. So far from getting rid of the colonization contracts, if we adopt this section, we shall discharge the contractors from all the conditions which the contracts themselves place upon them. It will be no doubt recollected by every lawyer here, that if one of the parties to a contract prevents the other from performing his part of the obligation, the other party is discharged from all obligation, and cannot be called upon to fulfil it. The case of Arredondo, in the United States' Supreme Court covers the whole ground. This is but a common principle of law, a familiar principle, of which every lawyer need only to be reminded, at once to admit, that if you prevent a party from discharging his part of a contract by any act of your own, in the contemplation of law he is not bound to comply any longer. What do the committee propose here? They say, we will suspend these colony contracts, and will give the contractors the right to sue the government. What will be precisely the operation of that? Not what the committee contemplate. The contractor comes in and says, you have by your actions suspended my contract: by declaring that it shall cease, you have prevented my getting settlers to go upon the land: you have therefore discharged me from it. And there is no court in christendom, acting impartially, that would not so decide. I am unwilling to take a position which would discharge all these contractors; I am unwilling, by attempting to do injustice, to deprive the government of the very advantages of these contracts, however unwisely they have been entered into.

I will suggest an amendment, which, in my opinion, goes to the extent to which we may go upon this subject; prohibiting the Legislature from extending the time of any contract heretofore entered into by the President; and requiring judicial proceedings to be instituted for the purpose of declaring these contracts void, if void at the time they were made, or not complied with since, guaranteeing the rights of the actual settlers.

The United States courts have decided that, no change of government changes the rights of property, that no change of *form*, *no revolution*, can by any possibility change the rights which individuals have acquired to property; that these rights are guarantied upon a general principle of international law, of the law of every country. How, then, is it possible for us, in the face of all these decisions, to undertake here to say, that we will annul those contracts, without giving notice, and without any of those proceedings which the law requires before a contract can be cancelled. It is said that this Convention has judicial powers; grant it, for argument's sake, though, by the by, I deny it; we can, only proceed by an arbitrary edict to annul a right without having the opposite party before us; and you know that a judgment of any tribunal of a judicial character, without notice to the party intended to be affected, is an absolute nullity; and hence, where actual notice cannot be had, publication is regarded as constructive notice.

The section assumes the ground, that although the contractors may have complied with the conditions of the contract, although there may have been no default upon the part of the contractors, yet we have the right to annul them. I deny the existence of any such right; and that denial is based upon a series of decisions of the supreme court of the United States, as well as upon the plain principles of international law, which every lawyer must be familiar with. What would be the practical operation of such an attempt? We know that these contractors are non-residents; we know that the courts of the United States are open to them. We know they could proceed by injunction to restrain the agents of the State from exercising any authority whatever, and could proceed by mandamus to prevent our own commissioners from issuing patents. It is one thing to do a foolish thing, and another to get out of it. These contracts may have been wise or foolish; that is not the quession before us; they are the acts of the government, until declared otherwise by the proper authority.

There is another principle, based upon decisions of the supreme court of the United States; that when a government has once granted lands, it has no longer a jurisdiction over that land, and it is not competent for any government to resume it. This section is not only decidedly contrary to the Constitution of the United States, as impairing the obligation of a contract, but it is contrary to the general principle of law, that when a State has once made a grant, it has parted with the power to resume it.

We need not expect that the Senate of the United States will admit us into the Union, when the very charter under which we claim admission, embraces a very clear and palpable violation of the principles of international law, and of that very Constitution under which we are seeking to shelter ourselves.

It is due to the importance of the subject that the reference should be had, that we may proceed understandingly in relation to the whole matter.

With regard to the other section, I have only a single remark. The Legislature by law can provide a method for determining what lands are forfeited. I am willing to leave that authority to the State Legislature, where it now belongs. What the policy of the country may hereafter become, we know not; whether or not it will be policy to resume all lands which have been forfeited. If it should be against the policy of the country to resume them, I see no wisdom in making it imperative upon the Legislature to resume them contrary to the public policy.

I know the peculiarity of the situation of those at whom this provision is intended to strike. The Constitution containing the clauses of forfeiture was adopted in June; and several months afterwards the army of the enemy was in possession of a large portion of the Western country; it was impossible for this law to be promulgated there; and will you punish a man for disobeying a law which he could not know? One of the officers then in command is now upon this floor, and well knows that a large portion of the population of that country was ordered off. I wish to know if it is the intention of this Convention to tear that population from their houses and their firesides? If there is any idea of that sort entertained by any portion of this body, I think it had better be left to the Legislature, and as a matter of policy and common decency kept out of the Constitution till we get into the Union. But I do not believe that the sense of the country is in favor of any thing of the kind. I do not conceive it expedient or proper to require the Legislature in all cases, without distinction, to hunt over the community, and deprive every man in that situation of his house and property. To what confusion would it not lead, to what a chance of oppression? What a club it would place in the hands of every little big man in every portion of the country? It strikes me that we ought to be cautious what ground we tread over. Who is clamoring for it, the State of Texas, or private individuals, who, in advance of the exercise of this right by the State, have placed their locations upon this territory, and now, with wolfish appetite, are endeavoring to place a clause of this kind in the Constitution to gratify and glut their disposition for spoils?

It may be very important that the State should not exercise this right at this time. It is well known that Jay's treaty could not have been made, unless some guarantee had been given in favor of those who were termed at that time refugees; and would it be wise in us to place Texas in a position which might interfere in the negociation of a treaty between the United States and Mexico? I think not. It may be the means of precipitating the United States into a war, or of continuing her in a war. It is impossible to find any treaty of modern times which does not embrace stipulations securing parties in this unfortunate condition. The right of forfeiture is an unjust right, it is one against which every writer upon international law has bore testimony, one which the British government repudiates, one against which the light of modern times has set its face. I am aware that the Supreme Court of the United States has taken a different view of the subject; that in the case of Brown against the United States, it was decided to be a strict right. But at the same time it is a right against which Chief Justice Marshall reasoned, while delivering his opinion, as in itself illiberal, and not a right which the sense of the world, and particularly the judicial world, was inclined to uphold and maintain. Such being the case, I conceive that there is no reason why, merely to gratify private speculation, we should make it absolutely imperative upon the the Legislature to pass a law which might be inconvenient to the State of Texas itself.

Mr. *Cunningham* said: I am somewhat surprised, Mr. President, at the arguments of the gentleman who has last addressed the Convention. He commences by saying that he would be perfectly willing to adopt the section, if the clause of forfeiture were left out. If he will examine, he will find, that the clause as it now exists in the Constitution, is nothing more nor less than an express declaration, made without testimony, without hearing any evidence, that the claims of John T. Mason and his colleagues, are fraudulent, and therefore void. But, sir, there is no judicial act contemplated here. It is intended only to open this matter to the action of the judicial authorities of the country. It declares those people who have been guilty of violating a certain law, have forfeited their lands, and that upon proof of the fact before the judiciary of the country, they shall declare them forfeited, and the right will then vest in the State of Texas. Gentlemen are perhaps unaware that the right is not thus vested in any speculator, but in the government, and that those lands will be bound for the payment of the promissory notes and liabilities of the government. Now, there are more than a million of acres of land which have been forfeited, and consequently should be sold for the benefit of the country, and the public debt paid with them. An act of this kind cannot give them to individuals, but must restore them to the Republic itself. The gentleman speaks of the hardness of the case, with respect to those who have forfeited their lands by taking up arms against us, or leaving the country to avoid participating in the war, and calls your attention to the order issued, I believe, by yourself, at Victoria, in the immediate expectation of another invasion. Now, sir, persons who have been driven from the country are not embraced in that provision; those who have not left the country for the purpose of avoiding the struggle, but have been driven off, in order that the frontier might be properly protected. There is another fact, of which the gentleman is probably not aware; that when the Mexicans invaded the country, a large proportion of the citizens of Goliad and Victoria joined the enemy, as I am informed, a large party was headed by a man now residing in Texas. It is for such as these that this provision is intended; and I can see no hardship in the case. I will say that the welfare of my country depends entirely upon it; it is necessary, in order that its lands may be settled. But if no steps are taken in this matter by the Convention, if it is to be left to the Legislature, I agree with the gentleman, that we had better discharge them at once from forfeiture. I disagree with him, however, with respect to the right of the Convention to forfeit private property. I believe that the delegates of the people in Convention assembled, have the right to take private property, without a trial, or without hearing; but whether or not it is expedient for them to do so, is another thing.

The very provision now entertained in our Constitution, was adopted by the Consultation in 1835. Since that time many of these persons have borne arms against the Republic of Texas; the Mexican army, in leaving the country, carried with it a large proportion of the settlers of Goliad and Victoria counties. This is not an *ex post facto* provision with regard to them; they knowingly and wilfully violated a law of this country, and abandoned her at a point of time when their services were needed. I believe there are millions of acres, worth millions of dollars, which, if these matters should be inquired into, might be thrown into the treasury of the State of Texas.

This is not a matter of private speculation with me. I have no location upon these lands; I believe they are not subject to location. I believe the law has provided that those lands should be set aside and mortgaged for the payment of our promissory notes. It is for the benefit of the Republic alone, and for that of my county, that it may be settled, and that the people may know of whom to purchase, that I have made these objections to striking out.

Mr. *Armstrong* of *Jefferson* said: I hope the reference will not be made, inasmuch as it is in the power of any member to cut off all debate by moving the previous question. The sense of the House may be had without referring the subject; and by a reference, it may not come up in sufficient time to be acted upon by the House. I think the object of the committee to whom it was referred, was to protect these rights, and to preserve them in the very same situation in which the Convention now finds them. The next section, not yet arrived at, it is also moved to refer. I must briefly notice some remarks made by the gentleman from Bexar. He supposes that the laws of nations are now to be brought here to govern the deliberations of this body, that the laws of England, the United States and others must be regarded. I am opposed to divesting rights which have been vested in any individual in Texas, and agree in the main with that gentleman in the object for which he contends; but for different reasons. I understand him to say, in the case of Ochiltree *versus* Taylor, that the people in a state of revolution had a right to do all things which they might see proper. Mr. *Howard* explained: All political acts they may do; but taking private property from Tom, and giving it to Dick, is a different thing. Mr. Armstong continued. I understood the right to extend to the rights of persons in the case alluded to. I understood him to state that a country in a state of political revolution can do any thing which the people of the country and the Convention ratified by the people may think proper to do. It is not necessary that this country should have any eye to what the U. States may wish us to do. What have the laws of the U. States, or treaties made with foreign powers to do with an organic law for the State of Texas? We have the right to frame our institutions in our own way, so that we do not violate the Constitution of the U. States, so that we make them republican. We have the right certainly to arrange and fix our own matters in such a way as best to promote the public good Yet, I will admit that it might not be very just, honest, or expedient, to oust some of these individuals of their rights. But we have the right to do it: we have the right to adjust our own land matters. If we insert this in the Constitution, how will it be possible to get round it? Some think it may be set aside by the judiciary; but the judiciary will come in under it, as part of the organic law of the land. If there is any thing which we regard as an evil or curse in the community, we have the right to remove it, submitting our action to the people of Texas; and when they have ratified it, it is past all remedy and beyond all relief. This may be hard; it may not be just. But such things are lawful in a state of revolution when they will produce more good than harm. If the public good requires it, we have a right to do it, and ought to do it. As for precedents referred to upon this subject, you will find that they frequently have regard to certain treaties.

The Republic of Texas has seen fit to insert in her Constitution a clause which set aside and made void just such claims Is the Republic to be charged with having passed an unjust law? The judges have decided under it. If we adopt any thing in this Constitution as [illegible] trary as that, though it may be unjust in a moral point of view, yet it will be as obligatory as that was upon the judiciary of the country.

Mr. *Jewett* said: Mr. President, I feel myself compelled to oppose the reference of this subject, because, as I believe the session is drawing near its close, I fear that if we consign it to the committee, it will never again be brought forward. As the course of debate has been general, I trust I shall not be regarded as trespassing upon the indulgence of the Convention, if I give my views upon the subject freely and at once.

The magnitude of the interests designed to be protected by this article, entitles it to the most serious consideration of the Convention, and the result of our deliberations, I trust, will be a unanimous vote in its favor.

The article as originally referred to the committee on the General Provisions of the Constitution, provided that such laws and parts of laws only, should be continued in force, as were not incompatible with the Constitution of the United States. This portion of the article was stricken out, and the present form recommended by the committee. Its special object is to preserve and protect the rights of Texian citizens to their lands, also to guaranty any other privileges which they may have acquired under the Constitution and laws of the Republic. It is also designed to give to the Constitution of the United States, as far as practicable, a prospective, and provide against a retroactive effect over the institutions of our country.

As the case of forfeited lands is provided for in the shedule, and there may be another clause inserted as an additional article, for the purpose, a majority may not think it essential to insert the word forfeited here, though I would prefer its insertion at this place.

It cannot be denied, that while it is our duty to prepare a republican form of Constitution, that will secure admission to the United States, it is also one of our highest obligations, to defend, and preserve the honest claims to the people of Texas to their lands. A peculiar system of land laws, and rights created under the laws of Mexico, have now for many years been in force The system is interwoven with the dearest rights of our citizens, and its ramifications are co-extensive with the limits of the Republic. These rights, Mr. President, have been earned and dearly bought. They have been won by our people, through privations through perils, through war and carnage. They have been growing with the growth and strengthening with the strength of Texas, from the day when Stephen F. Austin and his three hundred pioneers first planted themselves on the Brazos, and laid the corner stone of our political institutions. They were wrested by freemen, from a barbarous tyrant. Ten years of independent existence as a nation, has strengthened and consolidated these rights. They must be preserved. The people expect us to protect them: let them not be disappointed.

Some may object that we should insert no provision in our State Constitution, that might be objectionable in the United States' Congress, and that would have a tendency to prevent its acceptance by that body. This is a wise precaution. I would not intentionally and unnecessarily insert any article in our Constitution that might jeopard its acceptance. But I feel it my duty to do every thing, consistent with this intention, to protect and preserve the rights which have been won by the people of Texas, through so much suffering and toil. The people have been notified, also, by the President, in a proclamation, of *contingencies* that may follow the act of annexation. If any unfavorable contingencies will accompany annexation to the United States, it is our duty as faithful representatives of the people, to guard against them. If any spirits of evil contingencies can be evoked from the abyss of the future, I would exorcise them in advance. I cannot believe, Mr. President, that we ought to frame our Constitution solely with a view of obtaining admission to the United States. utterly regardless of the existing rights of our citizens. Nor can I believe that Texas is so poor—so weak—so near sinking in the sea of her political troubles, that she must catch at the naked rope of annexation, as the only chance for her political preservation.

Let the people of Texas be honestly told, what they may hope, or what they may apprehend from annexation. The adoption of this article will allay any alarm that may have been entertained by the people. It will prevent the act of annexation from reanimating the lifeless corpse of any old debt that has expired under the operation of our Constitution and laws. It will prevent the resurection of any ancient land claims that have been consigned to perpetual repose by our statutes of limitation.

This article proposed to be incorporated in our organic law, affords a safeguard to the rights of the people. It will present a barrier against the possible encroachmdnts of a judiciary, now a stranger to the peculiar laws of our republic.

It is our duty to adopt it as a rampart against some future avalanche of judicial construction, that might sweep across our republic, and carry away the rights of our oldest and worthiest citizens.

I cannot apprehend that the adoption of this article will hazard the ratification of our Constitution by the Congress of the United States. The people of that nation have always sympathized with us in our struggles. They have now thrown wide the door of annexation, and invited us to share in the advantages of their political institutions. They cannot desire to strip and rob us of our rights and immunities dearly won, as they have been, as we are entering the Union.

Let us then adopt this article to protect our people, and prevent any evil consequences that might ensue from judicial assumption and misconstruction. I view the article as affording a bridge. broad and strong over which the people of Texas may securely pass into the Confederacy of the United States. I trust the Convention will give it the support of unanimity.

Mr. *Brown* said he should oppose the reference, as he believed that a decision on the matters involved in the 20th and 21st sections, must turn on a question of expediency and not of law, and that the House were then prepared to dispose of it.

He said he did not rise for the purpose of debating that *expediency*, or of giving his opinion of the effect of those sections upon the welfare of the State; but he felt imperatively called on to notice the *legale exceptions* taken against their passage by the gentleman from Bexar, (Mr. Howard). He felt it due to candor and to both sides of the question, that it should be stripped of those embarrassments and laid before the Convention in its proper light.

The gentleman had presented an imposing and he thought a specious arrangement of legal principles and adjudicated cases, which, if he understood their bearing, opposed the passage of the sections, but constituted no reason for making the reference. With all the principles, and some of the cases, Mr. B. said he was acquainted before that day, but he hoped the gentleman would excuse him for saying that he could not perceive any assignable relation which they have to the subject under discussion.

The 21st section, [which is entirely independent of the 20th.] cancels all the colonization contracts subsisting between different Empresarios and the government of Texas, and entitles the Empresarios to indemnity for the recission of the contract. The first position assumed by the gentleman was, that this section was repugnant to the Constitution of the United States; the next, that it was a principle of law, supported by volumes of decisions, that if a party to a contract made it impossible for the other party to fulfil it, the other would be released from his obligations, and entitled to all benefits under the contract, as much so as if he had performed the precedent conditions.

From these positions he reasoned, first, to the rejection of the Constitution we were making now, by the Congress of the United States, and then to the conclusion that the Empresario would be entitled to full compensation for services never performed; alledging that if the State had to pay the premium lands, it should gain the population. Mr. B. said it was not his purpose then to controvert either position; he would try them against each other, and see by that trial if *both* could stand. He said that he understood an unconstitutional thing to be nothing—a nullity—the same as if it had never existed—productive of no effect for good or evil. He would be glad to know from an act of this sort how the country could lose the population, or the Empresario be discharged. The Empresario sues for his premium lands—the State says he has not performed his contract—the Empresario says the State has relieved him from that duty, and violated the contract by the 21st section. The gentleman from Bexar says the 21st section is unconstitutional. [He might add void]. Would it follow from this that the Empresarios could recover? Could it avail, for him to plead and prove that nothing had interrupted him? No such consequence as that feared and depicted can follow from an unconstitutional act.

Here Mr. Howard explained: he said he had not said that the 21st section was repugnant to the Constitution of the United States, so as to conflict with it: but that it was repugnant to a principle contained in both the Constitution of Texas and the United States: that he had before explained this.

Mr. B. said he did not hear that explanation last referred to; he knew he had not misstated the language of the gentleman when he addressed the House; that he did not hear the qualification by which they were limited in his subsequent remarks; but that explanation took away the whole force from his argument. Though the adoption of the section, if we were acting in a legislative capacity, under the Constitution of the United States, might be a departure from a principle contained in that Constitution. Yet, as we were in no measure amenable to that Constitotion in the present instance,—though the principles might be variant. Yet if no conflict could ensue, the variance could do no harm, and the Empresario no good. It was the opposition to this that the gentleman had labored so ingeniously to establish,

Mr. B. said he would endeavor to point out the instances in which the Convention were and were not bound by the Constitution of the United States.

In all matters which were *executory*, and to be done after Texas should be annexed, it was necessary that the Constitution of the United States should be rigidly observed; any section in our Constitution providing for a departure from that instrument would be void; but in those things which were *executed*, and would be finally done and executed before the jurisdiction of the United States would begin, it was not necessary that we should conform our actions to that instrument. It never can be triable in any forum on earth, whether this section is in conflict with the Constitution of the United States, or the organic laws of any other land. Nor could the Empresario question our right in any court to rescind these compacts. The affirmative acts of Texas, entirely executed, while an independent State, can never [if wrong] be set right or avoided by adjudication in any court. The court would tell the plaintiff that it had no rule by which they could be tried. Mr. B. said he had no idea that the adoption of the section could hazard the acceptance of the Constitution when it came before the Congress of the United States. If we should comply with the conditions of the joint resolutions, he felt no alarm. Our government would not be a monarchy, an aristocracy, nor a democracy; it would not be compounded of that,—but a plain Republic, in which all the citizens professing the same qualifications were admitted to *equal political rights*; all having an equal share in its control and protection. The Congress cannot examine the necessity under which we labor, or know that the Empresario has not or does not acquiesce in the alteration of his right. It cannot look behind the Constitution. Our Constitution only will be tried by a political test. If after its acceptance, it will have no prospective operation inconsistent with the Constitution of the United States, or the joint resolutions, it must be accepted. The effect before a court or Congress of the United States, would be just the same as if those sections were taken out of the Constitution, and being submitted separately by the Convention, were to obtain the ratification of the people. So much of our constitution as relates to *government*, will be strictly searched; but no notice can be taken of events which will transpire in the lifetime of the Republic. Mr. B. said he would notice the allusion of the Constitution of Texas. He deemed it a sufficient answer to say that we were not acting under that Constitution, but above it, though he did not admit that the allegation of any civil contract would be impaired by the adoption of either section. The principle in the Constitution is a restraint on the Congress of Texas, not on this body. If the Empresarios relied on this for their security, they must have been singularly blind to another principle, that at the will of the public, the whole Constitution was liable to repeal—the whole nation to anarchy; and, consequently, all legal rights to existing instruments. The right of the majority to change or repeal the social compact, carries with it necessarily all rights which are consequent and incidental. It might form a reason, and a just one for changing the Constitution, that *any evil* existed which could not be reached as the government was constituted at present. Mr. B. said he knew the gentleman from Bexar had relinquished every thing at which he aimed, by quoting the *law*, when he gave his meaning of collision between the Constitution, and every thing at which he aimed in stating that collision. It turned out to be a variance, merely, under circumstances so widely different, that no analogy could be drawn. It embodies a different but not an antagonistical principle: one is a case in the Constitution: the other, a principle over the laws. It can make no jar, produce no unhappy conflict, and will be harmless to the future government.

Mr. B. said he admitted it to be a principle of natural law, from which no community ought to swerve, that private rights fairly acquired, should not be impaired or taken away by a change of government. The principle, however, was subject to so many modifications; that as an abstract principle, it could not be regarded; the change of government may necessarily operate a change on private rights, and almost in every instance does. The true principle is, that when the change can be avoided, it should be: but he did not understand that the section would impair any vested right. The Empresario had no reason to know that the feeling of the Legislature would be the feeling of this Convention: whatever rights they have, were accepted on a contingency of a change in government and national policy. Their rights were vested so long as the policy which vested those rights was unalterable; they could not have read any natural, [or if gentlemen will call it so] national law to the contrary: for a written constitution, or a legislative enactment can, and often does expressly contravene those rules. What is to become of our treaties, if a different principle should be carried out?

The section will entitle the Empresarios to all the acquisitions they have made; and compensates them for their right to make more. If it should turn out that those contracts were bottomed in fraud, or that an immoral population would be brought to our shores by a continuance of the contracts, who can question our rights by making fair indemnity to annul them? But if the contracts were fairly made, and the feeling still good, there was no right in law, and no reason in fact to make any change.

In respect to the 20th section, Mr. B. said, it left the rights of the government where they would stand, if that section should not be adopted. It was but an affirmative of the law as it stood before. This was the law written in the Constitution when overtures were made by the United State. They surely could not object to it. The gentleman from Bexar had argued the question as if the effect of the section was to decide between the old grantees and subsequent claimants. It will not be so; if the right should be lost by the original grantees, it will go to the government, who will have the power, for good reasons, to remit the forfeitures, or to cede away the property forfeited, The government will not be prevented, as the gentleman supposes, from consenting to any treaty between the United States and Mexico, providing for the remission of forfeitures; but the United States have not demanded it of us for her own citizens, who refused to participate in the war, and thus lost their lands; nor is it probable that such terms will ever enter into any future treaty. Mr. B. said the law had been the same for the last nine years: no rights had ever been tried under it, and he wished those rights to continue in suspense, to be enforced or relinquished as after events might determine: that there was an omitted class of meritorious claims which might be lost, but he wished those to form the subject of an independent provision.

Mr. *Howard* said: I understand gentlemen to contend, and it is the basis of their argument, that when in a state of revolution, we may adopt any measure we may see proper, without limit. I would ask them if they think we have a right under the law of nations to cancel the debt we owe to Mr. Dawson? Suppose a man should take a fancy to my land, and conceive he ought to pay me one thousand dollars for it, I would ask the gentlemen who have spoken, if they believe that this Convention has the right, the revolutionary right, to pass a resolution taking the land from me, an giving it to him at that price? Can any one imagine that the Convention has the power to do it? If any one supposes so, I can only tell him that he is not acquainted with the horn books of national law. For they do say, in passing through all changes whatever in the forms of government, that the debts, contracts and obligations of the community remain unchanged. Gentlemen had better consult their books before they take that position upon this floor, because it may be a rash position for members here to take. I have consulted the books, and let me say that the principle for which I contend is universally laid down in them. For as Chancellor Kent says, the community is the same, and there is no change in the debts and obligations of that community. They are unaffected and untouched, and there is no way by which you can reach them, except that of brute force, christen it if you please with the name of repudiation. Private property, rights, duties and obligations to individuals are as different from political rights and obligations, as day is from night. I am almost ashamed to repeat a principle here, so familiar to every member of the legal drofession. I do not contend that what we might do would be void, because it might violate the present Constitution of Texas; but I say it certainly would look singular if we should deliberately violate this rule in relation to contracts in forming a Constitution. Neither do I say it would be void, because a violation of the Constitution of the United States. But I say it would be void, because a violation of international law; and does not the President of the Convention and every member of it know that the international law of the world is a part of the municipal law of every country, that there are certain principles which no nation is at liberty to disregard? This is a violation of private contract: it is taking property from one man and giving it to another.

All I ask for is this: that the question be referred to the judiciary committee, that they may view the whole subject, and examine the ground we are attempting to tread upon, and see whether we have a right to go there, in accordance with the law of nations and the principles of justice.

Mr. *Davis* said: I shall object to the reference, as I see no good which can result from it. The subject has been discussed now almost half a day; the Convention is perfectly conversant with it, and prepared to vote upon it knowingly. As regards the other section, I see no necessity for referring that to the judiciary committee. It has already been referred, and reported upon. I entertain the opinion that this Convention has the power, but should be extremely cautious in the exercise of it. This body stands upon higher ground than the Legislature; they are creating the organic law of the land, and have the right to do almost every thing they please. Upon the subject of the 4th section, I am glad to find that the gentleman from Victoria agrees with me that individuals who have located upon lands subject to a forfeiture or escheat, had no right to do so: if so, their locations are null and void, and the patents granted them are null and void: and the lands will be appropriated to the purpose of paying the public debt. I will offer an amendment declaring all locations made upon these lands forfeited, and subject to be escheated, and all patents issued upon them, null and void. We are not here for the purpose of adopting means to benefit speculators or gentlemen who have located upon these lands. If we do any thing in relation to this subject, if we point out the mode by which forfeitures and escheats shall be declared, and the State is at the expense of it, then let the government have the benefit of these lands agreeably to the act of the Legislature upon the subject. If they have been set apart, and if the Legislature intended to set them apart for the payment of the public debt, and the gentleman from Victoria would seem to say that is the fact, then these individuals have located them with their eyes open, and should not come to this Convention and ask us to adopt provisions in our Constitution to place them in possession of these lands. I will notify the House, that I shall offer an amendment which will carry out the views of the gentleman from Victoria; and I am very much gratified to see him and myself occupying the same ground upon this subject.

Mr. *Armstrong* of J., said. It is laid down as a violation of the principles of international law, that this Convention should take into consideration any thing in relation to the question under debate; and the gentleman seems to call upon me to show that the Convention has the right to take it into consideration and act upon it. I wil answer, that, so far as the laws of nations are concerned, they are considered as the rule of action between governments or nations in their intercourse with each other, Then how is it possible for the State of Texas to violate the laws of nations, when it is to be an integral part of a nation itself? These laws are not brought to bear between States. Were the laws of nations violated by the State of Mississippi in repudiating her bonds? She had a right to incorporate a provision repudiating them, in her new Constitution; and not only were the laws of nations not thus interfered with, but the laws and Constitution of the United States were not thereby interfered with. I agree with the gentleman with regard to the justice of depriving Mr. Dawson of his dues; but at the same time I would ask what law of the United States, or of nations would be violated by it? We have a right to do it; and it would not be considered brute force, if expediency required it. The general good might require a certain class of individuals to be proscribed; and we might insert articles in this Constitution, ousting them entirely frrm their rights. We have the power to do it; and how could it be set aside? Would the gentleman call in France and England to settle the matter? If a principle of the laws of nations were violated, these nations would have a right to interfere. But it is obvious that these nations have nothing to do with us in the formation of the organic law of the land.

Mr. Hemphill moved to adjourn until half past 8 o'clock, to-morrow morning. Lost.

Mr. *Lipscomb* said. I will not, Mr. President, detain the Convention long: I shall make my remarks very brief. I will here promise, that so far as the question of the right of property is involved in this subject, my immediate constituents have little or no interest in it. But in the principles involved, they, in common with the rest of the inhabitants of the Republic, are deeply and vitally interested. No one will subscribe more readily than myself to the position that it is important to tranquilize and quiet the public mind in relation to litigated questions; that the statutes of prescription should be sustained, and things long settled should not be again ripped up. The President of the Convention will recollect, that when this subject was mentioned in conversation, I approved of a section of this kind; and I now say, that as reported, it meets my hearty concurrence. I believe that, as reported, it will effect all the great objects for the attainment of which so many are anxions; and I believe that many are driven to the support of amendments and ultra measures, by the fear that these objects will not be accomplished. The great objects to be effected seem to be, that the decisions which have been made, the laws which have vested rights, and the laws which have taken away the exercise of rights or declare any right annulled, shall remain inviolate. So far I am willing to go. This is intended, I believe, to affect a great class of cases, aimed at, whether hit or not, by the Convention, in its session at Washington, in 1836. It was the intention of that body to nullify all that class of cases called "Mason cases," growing out of the sales at Monclova, and which were assumed by the Convention to be fraudulent, and declared null and void. Then they should remain so: I am not disposed to go into the inquiry whether the Convention assumed greater power than belonged to it; whether their action was expedient or not. No injury can result now from this exercise of power. When the government of the United States offered to receive us into the Union, this was known at the time to be embraced in the fundamental law of the land. That law has been sustained; we have enjoyed nine years of peace and quiet; and I hope these claims will never be revived, but sleep forever in the tomb of the capulets. I regret exceedingly that any amendment has been offered to this section. Some gentlemen of my much honored profession say that the amendment offered makes no difference in the section. I believe otherwise; I believe it does introduce a vital and important change. It has been said that the word "forfeited" is harmless; I think I can show that it may possibly do injury. I will take up the subject as a question of policy, to be coolly and calmly discussed, and beg the Convention to give it the consideration to which such a question is entitled. I object to this amendment, because it embraces two classes of claims which I believe should be left open to the action of the Legislature. The first class includes claims rejected by the Board of Land Commissioners, which, for some cause, have not been sued within the time prescribed by law. Adopt this word "forfeited," and what is the result? The Legislature will not have the power to pass any law affording any relief to such claimants, however strong the plea they may urge: because the Constitution, the fundamental law must govern. The courts can give no relief, because, as they will say, these are cases of forfeiture, and they can only inquire whether application has been made in time. Possibly there may be many cases where good excuses may be rendered, such as every member would say ought to have weight, and make the cases exceptions. But they cannot make exceptions, if this amendment is adopted, and becomes the law of the land, which cannot be altered or amended. I would prefer leaving it to the Legislature to dispose of these peculiar cases which are entitled to grace and favor, as they might present themselves. This, it seems to me, would be wise and just, would violate no principle, and do injury to no man. There is a difference of opinion with some of the profession, as to where application should be made to clear up head rights, whether in the county of the claimant's residence, or that in which the certificate was issued. It is well known that there are several depopulated counties, where the court has had no sessions. Does not this circumstance afford a good excuse in many cases? Cannot claimants make a strong appeal to the Legislature to make an exemption of such a class of cases? But there is a great class of cases perhaps most affected by the amendment; that class which would be called "escheated." And I care not whether these individuals took the Sabine shoot, or fled over the Rio Grande: I would say that both ways, in many cases, they have an excuse which ought to be formally listened to. Many of them have retreated with their families under circumstances known to the Legislature, and which would induce the Legislature to make an exception of their cases. Now, as long as the law stands as it is, it is inchoate and imperfect, and the Legislature has the power to relieve against it. I believe, at this day, to confiscate a man's property for opinion's sake, would be considered half a century or more behind the age in which we live; it would do no credit to us in our Constitution. I believe it would be now perfectly unique; that it would stand alone, in bold relief, as the declaration of a people crying out for free institutions and toleration in every thing. This resolution confiscates a man's property merely for avoiding a participation in the struggle. I am not prepared to go that length. In case of an active participation against us, there might be cases not entitled to grace and favor; but there is a large class, in which we should listen to any thing to be said in their favor, and we shall much more readily find an excuse for those in the West, than for those who took the other shoot. Here were people speaking the language of the invader, and accustomed to believe in the omnipotence of the invader; and if they fled they are surely entitled to more favor than those of our own people, who yielding to their selfish fears, fled eastward. I fully concur in the opinion of the gentleman from Bexar, that there cannot be found a modern treaty, at the close of a war, where peace has been concluded, in which a stipulation for the restoration of all property forfeited for opinion's sake has not been made a point of honor. The power losing its territory insists upon that as the first thing. So, at the close of the war of the revolution, this difficulty was presented in the case of the loyalists, as they called themselves, or refugees, as they were called by their opponents. Some of the States proceeded to declare their property confiscated; but most of them went no farther; there was no action under that law. The question came up in the Supreme Court of the United States, in the case of Fairfax's heirs, in which the court held the title of the State to be inchoate and imperfect, and that of the holder of the property not to be affected, until office found. Well, sir, if we go on and say that all this property shall be confiscated, I will not say we shall interpose such an impediment as will endanger our reception into the Union, but I will say we shall at least cause some embarrassment. Is it not reasonable to suppose that those who are looking out for an objection to hang a difficulty upon, may seize upon this? I think, then, it is safer, not tying up the hands of the Legislature, so that they could not do an act of justice, to let things remain where they are, and strike out the word "forfeited" It is a small word, but potent in its effect. With these objections to the word "forfeited," I feel, however, much disposed to be in favor of the section as it originally stood. I would say to those gentlemen who feel an interest in the question presented by these claims, that it is not a new one to me; it is one which I have investigated with diligence; and I believe the proposed action assailable upon many other grounds. But I am willing to vote for the section, and was pleased with it as offered by the committee. It had been adopted in our Constitution, it had slept there, and the people of the United States, in offering us terms, must have been aware of it. If any are under the impression that the word "forfeited" would strengthen their claims, I hope they will not insist upon it; for I believe it will do them no good, and in other quarters may do great injury. I am sorry that my friend from Bexar has united this section with the other, thus, in my opinion, putting a fair section in bad company. I would prefer to have this section stand separate and apart; then it need no be embarrassed by any objections which may be urged against that I trust the resolution will yet be modified, and the sense of the Convention taken upon the 20th section before the question is put on the reference to the Committee on the Judiciary.

I will remark further, as to forfeitures and escheats, that the 4th section of the schedule makes ample provision, that the Legislature shall provide a mode, in cases not entitled to grace, for declaring these lands absolutely forfeited. And I am glad that the gentleman from Victoria has changed his ground in one respect. The proceeds, at first, I recollect well, were to be applied to purposes of education; I am glad he has found out that the public faith requires that they should go into the public fund for the payment of our debt. If so, let us not violate it. The 21st section I do not intend to dwell much upon; though objections at every point present themselves to my mind. It has been emphatically asked, if we pass the section, what court can revise our action; if we have not the power to insert such a provision? Though, for the sake of argument, I admit that we have the power, I will not prostitute the word *right*, though I know they are often construed as meaning one and the same thing; say that we have the power; there is another court besides our judicial tribunals and the Supreme Court of the United States, of which many of my constituents are very much afraid; a court which is to assemble next winter; and when this Constitution is submitted to that tribunal, does any member believe that the Congress, the Senate of the United States, will look to the Constitution alone? It was not so in the case of Missouri. But questions of policy and expediency came up then. Many of the senators and members of Congress still make battle against us, and feel at liberty to attack any Constitution which we may send on for their acceptance. If we frame a Constitution subject to an objection of this sort, will not those who are disposed to cavil at every thing, say that they will form no union, that they will have no association with a people who undertake to violate a contract, or interfere with private rights? For myself, I say it in the presence of God and this Convention, if I were separate and apart from Texas, and representing a portion of the Union remote from Texas, this would be conclusive with me; I would not vote for a Constitution containing such a provision. I am not unwilling to do something in relation to these Empresario contracts; I believe we can do something. I believe we can do it by the adoption of a resolution prohibiting the Legislature from extending the time to contractors, and from relieving them; providing for instituting an immediate inquiry into the state of these contracts, that if forfeited, they may be declared void. So far I will go, and no farther. In conclusion, I repeat, I hope that the sections will be separated.

Mr. *Howard* withdrew his motion as far as it related to the 21st section, and moved the previous question; which motion was carried, the main question being the adoption of the 20th section.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs President, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—53.

No—Mr. Hunter—1.

So the section was adopted.

On motion of Mr. Lipscomb, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Tuesday, Aug. 5th, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Davis, from the select committee, to whom was referred the communication of the Commissioner of the General Land Office, of the 31st ult., made the following report:

Committee Room, August 4, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The select committee, to whom was referred the communication of the Commissioner of the General Land Office, upon the subject of that Department, have had the same under consideration, and a majority of the committee have instructed me to make the following report:

[Signed] JAMES DAVIS,
Chairman.

By reference to the communication referred to, it appears that the expenses of the General Land Office, at present, are as follows:

Salary of Commissioner,	$1,500
“ Chief Clerk,	1,050
“ Spanish Clerk,	1,050
“ Draftsman,	1,050
8 Assistant Clerks, $850 00 each,	6,800
For County Maps and connecting Surveys,	1,000
Contingent expenses,	200
Stationary,	200
Patents,	1,000
Surveying Land Scrip,	500
	$14,350

All of which expenses are now paid by the government, which seems to be an unfair appropriation, when we consider that those who obtain patents are the only persons benefitted.

The great reduction of the resources of the country, consequent upon the change from the present to a State government, imperatively demands that the Land Office should support itself. When the contemplated change takes place, the impost duties will be cut off, and we shall have to rely solely upon direct taxation for the support of the State government.

It is the confident opinion of the Commissioner of the General Land Office, that a reasonable sum paid by each individual obtaining a patent, would amply defray all the expenses of the Land Office Department, in which opinion your committee concur.

The impossibility of the General Land Office, under the present arrangement, to supply the demand for patents, as well as the great inconvenience and expense attendant upon persons having business in the Land Office, owing to the large extent of territory embraced in the State of Texas, imperiously demands a change of the system.

Your committee have given the subject that deliberation its importance demands, and concur in the suggestion of the Commissioner of the General Land Office: "That the territory embraced in each county should be created a land section." The sections thus created, should be divided according to territory, into land districts: that there should be appointed, by the Commissioner of the General Land Office, one draftsman and one surveyor, whose duty it shall be to examine the field-notes of all surveys situated within the limits of their respective districts, and correct all errors that they may discover in the same; to run all divisional and connecting lines—complete maps; and do all other things that will tend to the perfecting of the land business of their respective districts, in accordance with the instructions of the Commissioner of the General Land Office, and return the same to the General Land Office, to be patented; and as soon as patented, they shall be sent to the land districts to which they respectively belong, to be delivered to the patentee.

By the adoption of such a system, the great and increasing demand for patents, owing to the annexation of Texas to the United States, might be supplied. The owners of land are desirous to sell; and in consequence of the supposed great uncertainty of land titles in Texas, it might facilitate sales, to have patents.

The committee have instructed me to report the following section to be incorporated in the Constitution, and recommend its adoption:

"The Legislature shall, at its first session, so re-organize the Land Office Department, as to make it support itself, without becoming a charge to the State; and shall establish a number of land offices—not less than four nor more than six—until the year eighteen hundred and fifty, under such rules and regulations as shall be prescribed by law."

Mr. Jewett, one of the committee, filed his dissent from the report of the majority, as follows:

Committee Room, Aug. 4th, 1845.

To the Hon. Thomas J. Rusk,

President of the Convention:

The undersigned, one of the select committee to which was referred the communication of the Commissioner of the General Land Office, upon the subject of that Department, respectfully dissents from that part of the report of the majority of the committee which recommends the insertion of an article in the State Constitution, providing that "The Legislature shall, at its first session, so re-organize the Land Office Department, as to make it support itself, without becoming a charge to the State."

The undersigned considers it the more judicious policy to entrust this subject to the sound discretion of the Legislature, than to enjoin as a mandate upon that body, to adopt at its first session, this radical change in conducting the business of the Land Office. The effect of the proposed change is important; and with the information before the Convention, its operation upon the different sections of the country, cannot be duly understood.

The attention of the Legislature will, doubtless, be directed to the subject at an early period; and it may be confidently expected that the necessary laws will be passed, to provide for such change in conducting the business of the Land Office, as the public interest may require.

[Signed] HENRY J. JEWETT,
One of the Committee

The reports were ordered to lay on the table, to come up among the orders of the day.

Mr. Darnell moved to re-consider the vote of yesterday, referring the 18th section of the General Provisions to the committee on the judiciary; which motion was carried and vote re-considered.

Mr. Evans moved to re-consider the two votes of yesterday—one calling for the previous question on the 20th section of the General Provisions, and one adopting said section.

Mr. Cazneau moved to lay the motion on the table. Lost.

The question was then taken on the re-consideration and lost.

Mr. Davis offered the following resolution:

Resolved, That the Convention, for the remainder of the session, shall meet each day (Sundays excepted) at half past 8 o'clock, A. M.;

shall adjourn at half-past 12 o'clock, P. M; shall meet again at half-pas 2 o'clock, P. M; and shall again adjourn at 6 o'clock, P. M.

Mr. Lipscomb moved to amend the resolution by meeting at half-past 8 o'clock, A. M., and adjourn at half past 3 o'clock, P. M.

Mr. Young moved to amend the amendment, by reading, to meet at half-past 8 o'clock, A. M., and adjourn at half-past 6, P. M., which motion was carried.

Mr. Gage moved to lay the resolution on the table.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Evans, Gage, Jones, Kinney, M'Neill, Miller and White—8.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Young—46.

So the motion was lost.

Mr. Parker moved to refer the resolution to a select committee.

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. Caldwell, Evans, Gage, Hemphill, Lumpkin, McNeill, Parker, Rains and White—9.

Noes—Messrs President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Cazneau, Clark, Cunningham, Darnell, Davis. Everts. Forbes, Henderson, Hicks, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L, Latimer of R.R., Lewis. Love, Lusk, Lipscomb, M'Gowan, Miller, Moore, Navarro, Power, Runnels, cott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Young—47.

So the motion to refer was lost.

Mr. Gage moved the indefinite postponement of the resolution; which motion was lost.

The amendment of Mr. Lipscomb, as amended by Mr. Young, was adopted.

Mr. Armstrong of J., moved the previous question; which motion was carried.

The main question being the adoption of the resolution as amended the ayes and noes being called, stood thus:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Howard, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R.R., Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, Van Zandt and Young—50.

Noes—Messrs. Anderson, Forbes, Gage, M'Neill, Tarrant and White—6.

So the resolution was adopted.

Mr. Forbes offered the following resolution:

Whereas, a resolution has been adopted, requiring the Convention to meet at half past 8 o'clock, A. M., and sit until half-past 6 o'clock, P. M; therefore be it

Resolved, That the meals of the members be served in the adjoining hall.

Which resolution was laid on the table, one day, for consideration.

On motion of Mr. Burroughs, the Convention took up the

ORDERS OF THE DAY.

The resolution of Mr. Evans, of yesterday, proposing the appointment of a committee of five to enquire into the land system of Texas, and report to the Convention, was taken up.

Mr. Cunningham moved to amend by adding "also the number of acres which have been patented by the government of Texas, and in what counties the same is situated." Adopted.

The motion of Mr. Howard, to refer the 21st section of the General Provisions, and the 4th section of the schedule, to the Committee on the Judiciary, was taken up; and, on motion of Mr. Jewett, laid on the table for the present.

Mr. Cunningham offered the following additional section, to come in between the 20th and 21st sections. which, he said, was nothing more than the 8th section of the old Constitution of Texas:

"All persons who left the country for the purpose of evading a participation in the revolution of 1836, or who refused to participate in it, or who aided or assisted the Mexican enemy, shall forfeit all rights of citizenship, and such lands as they may hold in this State."

Mr. Rusk moved to refer the section to the Committee on the Judiciary.

Mr. *Hemphill* remarked that the circumstances of the country were different at present from what they were at the time of the adoption of the old Constitution. Then very few gentlemen thought our boundaries would extend beyond the old province of Texas, since that time they had been extended much further. If we should adopt the provision, without making any distinction with regard to the old and the new boundaries of the country, we should subject a vast number of people to rules to which they ought not to be subjected, and who were not reached by the Convention at the time they adopted this section. He thought it a right belonging to all countries to confiscate the property of traitors, and put them to death if taken. But the provision now introduced, he thought, covered too much ground. If not annexed, it would have been necessary for this Republic to have made a treaty with Mexico, or to have fought and driven off the enemy. If we made a treaty, we should probably have made provision for the protection of those who fled, in their property. Now, all questions of a similar character were left to the Government of the United States.

Mr. *Anderson* said; I hope the section will not be referred to the Judiciary Committee. It will not receive that deliberation which will be required; and the House is as well prepared now to act upon it, as it would be after such reference. I differ with gentlemen as to any effect which it would have upon a treaty between the United States and Mexico. Any right not laid down and defined in the joint resolutions, is reserved to the people of Texas. Those who left the country, and refused to participate in the revolution, and those who gave aid and comfort to the enemy, have now, under the old Constitution, forfeited all their rights and claims upon the government of Texas. She had the right to make such a provision; to discuss her right over this property would be to discuss a self-evident proposition. The United States does not require us to come into the Union with less rights than we had. How can this affect a treaty between Mexico and the United States? Is Mexico so formidable to the United States, that she would be compelled to relinquish any rights of one of her States; that in any future reconciliation the rights of this country must be sacrificed? Not so; but the reverse is the fact. I, for one, shall vote for the section, on the ground that Texas once had a right, and I see no reason for divesting her of a right; but I see an additional reason for perpetuating it, in the prostrate condition of the State, unless we adopt a section which will bring into the treasury of the country the proceeds of these forfeited claims. If it should be conclusively proved that this action is in violation of the Constitution of the United States, I will vote against it; but until that is done, I go for policy and expediency.

Mr. *Caldwell* said: I think this is a matter which ought not to be precipitately acted upon, but ought to be referred, or laid over for deliberation. At present I am clearly of opinion, though perhaps upon reflection that opinion may be changed, that the State of Texas, upon the adoption of this section, must yield now and forever all pretentions to the country between the Nueces and the Rio Grande. I have no idea in the world that we shall ever get that country, if we adopt this resolution. How many individuals are there of the large population in the vicinity of the Rio Grande, from Santa Fé down, who have not for the last ten years been aiding and assisting the forces kept there? Our own soldiers have been captured there by our own citizens. The inhabitants of that region scarcely know that we claim that country. We have never offered them any protection. They have aided the enemy, they have sold them provisions; that is the way in which they have lived. Are we to place this country in such a position as inevitably to lose that portion of our territory? The United States will not make any effort to treat for it, if compelled to move the whole population across the Rio Grande; they cannot do it unless they undertake to secure to those citizens the rights which they have never abandoned. Texas has never made any demand upon them in any way; are they to forfeit their rights because this government has never been able to exercise jurisdiction over them? In conclusion, I hope we shall desist from a mode of legislation which seems calculated to embarrass the United States in obtaining that territory for us. I doubt very much whether the annexation resolutions would be adopted by the people of Texas, if they believed that the country between the Nueces and Rio Grande was to be sacrificed. I would prefer the reference, that the subject may be inquired into.

Mr. *Young* said: It looks a little strange to me to see so many gentlemen pouncing down upon this section. If it is one of so innocent and inoffensive a character, why does it rustle up this opposition? If the object is, to put these beautiful gentlemen on a better footing than they were under the Constitution of the Republic of Texas, for one I am not prepared to go with them. By the Constitution, all persons who left the country for the purpose of evading a participation in the struggle, or refused to participate in it, or gave aid and assistance to the enemy, forfeited all rights of citizenship, and such lands as they might hold in the Republic. Let me ask, what became of the citizens in the neighborhood of San Augustine and Nacogdoches, who, for fear of being overtaken, stepped over the Sabine? What disposition was made of them, when they came up and asked for this league and labor? It was only necessary for the District Attorney to prove that they had left the country to avoid a participation in the struggle, and the jurors said they were not entitled to their land. What disposition then should be made of the claims of these people on the Rio Grande? Why, says the gentleman himself, they gave the enemy assistance; they gave them beef and corn. And did not some of them take a command in the armies of Mexico—some of those now holding lands in the Republic of Texas? I ask if it is fair to make a distinction between these classes of people? Here the white man comes, and asks to be put in possession of what he conceives to be his rights; and the laws of the country say he has no rights; this very section of the Constitution excludes him. But the Mexican is to stand upon a different footing. He has done nothing else but going back to his mother country for peace and protection; and further, he has kept from participating in the war. Yet it is said that he stands upon a different footing. Because he was a native born citizen of Mexico, and is entitled to privileges which others cannot claim. A celebrated gentleman, named Seguin, has not only abandoned us, but actually turned out with those gentlemen who assisted in destroying the people of Texas. Yet you say, do not insist upon a forfeiture against him, because it may perhaps affect a treaty between the United States and Mexico. Sir, we are to be governed alone by the resolutions passed by the United States Congress. If Mexico, like all other civilized countries, had treated after a reasonable war, we might have been disposed to make the provision alluded to. But now, we do not care anything about it. We are not disposed, however, to do anything wrong, though we have the power to do so. These people have thrown off their allegiance; they have said they did not want the protection offered by our government, that they did not look upon it as a sufficient guaranty, and therefore they would relinquish all claims upon it, and take protection under their own flag. It is true, this may operate harshly upon some individuals who have slept upon their rights, and have not obtained the certificates they are entitled to. But they are few in number; they have slept upon their rights and continued to sleep, until they have lost all their chances Now, sir, without the term "forfeiture" being placed in here, these persons may by chance obtain from the Legislature a statute for their relief; but it may be obtained, even with it, in a different way. In the case of those persons who can make a competent and fair showing that they were here and performed the duties required of every citizen, that they have always been ready and willing to do so, but have only forfeited their lands by sleeping upon their rights, I believe there will be sufficient power in the State Legislature to grant the proper relief. But I am opposed, and seriously opposed, to paying any individual, or giving him one foot of the public domain, who has absented himself from the country, or given relief or comfort to the enemy. It is argued by the gentleman from Bastrop, that these people are peculiarly situated; that at the formation of the Constitution of the Republic, they did not consider themselves citizens of Texas, and from his argument it would seem doubtful whether they are really in the Republic of Texas. Then this clause will not extend to them; if they are not in the Republic, if they are not citizens, they cannot be affected. But I do contend against the claims of persons who lived within the proper limits of Coahuila and Texas, and who abandoned their country and actually joined the armies of the enemy, and committed perhaps as much depredation upon Texas as any Mexican in the nation.

Mr. *Brown* said: It seems very difficult for this body to obtain any rule of action upon this subject. I cannot agree with either side. I am willing to go thus far and no farther: I am willing to reaffirm the law as it aforetime was; but beyond this I will not go a step. I am willing that the forfeitures which ought to have accrued to this government, in consequence of the delinquency of those who fled from the country, or took part against us in the revolution, should accrue to the new government. I think I should have gone no farther in giving my support to the 20th section, if the amendment had been adopted; for there was no proposal to take away from the Legislature the power of reinvesting these rights hereafter, if it should become necessary; the whole effect was to declare that *by the Constitution* they should not be reinvested. To that extent it had my support. I cannot support the proposition before the House at this time. It goes beyond the old Constitution, and proposes to declare forfeitures for acts which have occurred since the adoption of that instrument. It will not, however, affect any treaty to be made between the United States and Mexico: the State of Texas will have the ownership over this property. This is a bugbear which ought not to have a place in the discussion of this subject. I wish the law as it stands may continue in force. and that matters formerly in suspense should so remain, to this extent, that no individual should acquire any of these forfeited rights: but I am willing that the government should acquire them. I do not think, when this subject is fairly considered, that any thing can be plainer than that this Convention ought not to relinquish any rights of forfeiture, and that they ought not to inure to any but the government; nor do I think that this body ought to be in haste to bring about these forfeitures. I think it should be left to the Legislature, where it belongs, of all bodies the best able to determine when these rights should be suspended, and when they should be exercised. But the proposition of the gentleman from Victoria goes far beyond any thing contained in the Constitution of 1836. An individual case has been stated, of a man who held at one time a high place in our esteem; a man who, if I remembers aright, had once appeared in battle under our flag, and sat in the councils of the country; one who has forsaken the country, and attached himself to another at war with us. But, sir, that is a single case: it is not a fact sufficient to authorize a general rule. And, sir, if it were, for aught I know, a man who has forsaken his own country forever, where has property, and forsaken it with the prospect of having to relinquish that property forever, may pass his title to some body else; and per adventure, by passing the resolution offered by the gentleman from Victoria, we might deprive some honest and good citizen of his rights. Suppose that any man from the East, West, North or South, had bought of John Seguin. The old provision went into effect in 1836: this goes into effect in 1845: that is precisely the difference. Between these periods there have been no cases, to my knowledge, which require the interposition of this Convention; at all events, they are so few, and so insignificant, as scarcely to deserve it.

Mr, *Henderson* said: This question involves more interest than some gentlemen seem disposed to allow it. I think the true inquiry is, will the passage of this law embarrass future negociations between the U. States and Mexico? If it does, and I conceive the United States' government will so regard it, I presume that every gentleman upon this floor is ready to say that it would be unwise to enact it; and I agree with my friend from Bastrop, in the opinion that it will have that effect: that it will throw embarrassments in the way of the negociations which the United States must enter into with Mexico on the subject of our boundary. How stands that question? By our acceptance of the very resotions of the United States' Congress, which have called us together, we have passed out of our hands all power over that subject. And if we adopt this clause, we shall be saying to the United States, we adopt your resolutions, with the reservation that we claim the right to confiscate the property of all the citizens who have lived in this disputed territory: Would it not be a question intimately and necessarily connected with that of boundary, whether these lands belonging to citizens of Mexico, should be confiscated, or restored to their original owners? This is not a bare question of revenue, a mere matter of dollars and cents. If it were, I would ask this House, in what single instance has the government of Texas been benefitted by these declared forfeitures? Where is there a single instance in which this clause of the Constitution has been enforced to the benefit of the government; or when will there be such, if we judge from the past action of the Legislature of the country? Have they adopted any means by which forfeitures can be declared or enforced? Individuals may have been benefited, and this may throw land into the possession of individuals, but I venture to declare that it never will throw one dollar into the treasury of Texas; nor will the government gain one foot of land by it, unless the whole nature of the people and the course of our legislation are changed. Then let us leave this matter as it is: it is sufficiently provided for by the 20th section; let us leave things just as they are, but let us do nothing to restrain the United States when they enter into negociations with Mexico upon the subject of boundary. If we reserve to ourselves the whole control over the question, not only shall we not produce the effect which gentlemen seem to desire by enriching our treasury, but shall embarrass future negociations and delay the settlement of difficulties with Mexico, if we do not throw an insuperable barrier in the way of the adoption of our Constitution by the government of the United States.— Viewing the question in this light, and entertaining these opinions, I think at least we should refer this section, that it may be more maturely considered, and acted upon with more deliberation.

Mr. *Young* said: Why does the gentleman from San Augustine want this section referred? Why not bring it up here at once, and let these gentlemen vote against it? I am perfectly willing that every man in this House should vote against it but myself I call upon the liberality of the House to bring the question fairly up. I want the ayes and noes, that God and my country may see how each man votes.

Mr. President *Rusk* said: I have as little objection as any man to record my aye or no. But I do not pretend to the quickness of perception characterising some gentlemen, who are prepared at once to cast a vote upon a question involving so many important considerations. The question before the House is the one with which it was attempted to embarrass the 20th section. Now, that 20th section preserves the laws relating to forfeiture in force and effect, precisely as they have been for the last ten years; they are as much in force as they were on the 20th March, 1836, and will so continue to be until altered by a future Legislature. If the country is to get rich then by means of these forfeitures, it can do it now; if we want to punish those individuals who have taken a hand against us, we can do it now. Going a step further, I am ready to vote for the 4th section of the schedule, with some little amendment. I do not intend to let gentlemen put me in the position of throwing away these lands, when I vote against this section, which I think embraces nothing, which does not carry out the principles of justice, but I think will operate serious injustice, and, I am afraid, injure the cause of Texas. What is the great object avowed by gentlemen? That Texas may become rich. A set of Mexicans have taken arms against us, and the whole indignation of this Convention is aroused to punish them and enrich the treasury. Now there was a similar provision in the Constitution of 1836. Has the public treasury been enriched by these forfeitures? I attempted in my place in the Congress of 1837, to bring about a declaration upon the subject, but nobody would sustain me; I could not get these riches into the coffers of the country. Sir, this is a mere idle shadow; I have come to the conclusion of the old gentleman shearing a hog, that it is great cry and little wool. It may do for the ayes and noes: it may do for bunkum; but I have never yet seen a dollar accrue to the government from this source; and I will further make the assertion, that every dollar we shall ever derive from it will cost us five.

Gentlemen say they are not afraid that the United States government will reject our Constitution. I am not so bold as that. I see a gentleman of age and learning, one who stands proud and pre eminent for honesty and integrity, a man as fully identified with Texas as any gentleman upon this floor, rise in his place, and tell you, that if your Constitution should contain such articles as these which are attempted to be crammed into it, were he a Senator in the United States Congress, he would feel conscientiously bound to vote against the reception of a Constitution of that description

These people, it is said, took up arms against us. Yes, sir, they took up arms against us, and I have probably as good appreciation of the Mexican character as any gentleman here; I have seen it in its bad phases, and I have seen it in its good phases. I recollect, when the tocsin of war was heard in the land, that almost every citizen of San Antonio turned out his cattle and sacrificed every thing he had to support the army. Thousands upon thousands were thus contributed, and I doubt if ever one dollar of it has been paid back. I recollect many a Mexican in those days who stood by us, and battled bravely with us against their own countrymen in favor of the principles of civil and religious liberty. At Victoria the same thing occurred; the same thing at Goliad. It is very true that many joined the enemy. There are bad men among them as well as others; and many of them who were true patriots, and ever in favor of the true principles of liberty, were forced to join the enemy. Santa Anna, a bold and renowned military chieftain, was in possession of their towns and country; they were helpless and immediately under his control; and if they refused to obey his dictates, at a nod from him, their lives would be taken, and their families turned out upon the world. Will this Convention, now in a time of peace and quiet, when the country is rejoicing in prosperity and about to enter the glorious American Union, descend from its high functions, to wreak the vengeance of the State upon these poor people? It strikes me that the provision in your Constitution has a very limited application: there were but few there who could have forfeited their lands in 1836. We were obliged to drive them away, giving them the choice of places to which to remove. They deliberated upon it: if they went back into the interior settlements, they would have no way to make a living Some chose to return back, and a great many perished; some went to Matamoros, and a great many of them were killed. In truth, the whole western frontier presented, in 1835, a flourishing population, which was not then against us; all were in favor of civil liberty and religious toleration. What does that frontier present now? A scene of desolation, distress and degradation, brought about by the war. And would it be chivalric and generous in us, to take advantage now of our power, and take away these lands, even supposing that they had been thus forfeited? Waht would it benefit Texas? How was it in 1837, when the facts and circumstances were all before the community, when the proof was at hand; and what would be the operation of this now? That these laws should be put in operation, is spoken of as a thing absolutely necessary for the country, its welfare and safety. In 1837, it was thought so little of, that the Congress of that day refused to appoint officers to inquire into the cases in order to declare forfeitures. It was as much needed then. men were as keen then upon the subject of revenue as they are now, or ever will be. What would be the practical operation of this law? Suppose you send an officer to make the necessary investigation at Bexar, or any where else, eight or ten leagues of land, very fine land. are pointed out, information is filed against as many individuals; and after a great expenditure, after a labored effort, a case goes to the jury, when some gentleman walks up and says, I have got a patent for this land. I imagine this would happen with regard to most of the important lands. The government would then be under the necessity of spending a great deal of money in a contest with her own citizens.

The government of the United States, the people of the United States, have not acted upon this principle of forfeiture; they have punished their enemies upon the field of battle, and when a war was over, they have indulged those noble feelings of the heart, for which, I hope, Americans will always be distinguished, and never punished in cold blood. The first thing that Mexico will do, as a matter of pride, when she comes to negociate about limits, will be to insist that these citizens who were forced to leave their homes during our revolution, shall not be deprived of their rights; and the United States, with this in the Constitution, can make no such arrangement. In adopting this article, we are undertaking to prevent the United States from settling these matters upon such principles as she may think right and proper. I trust it may be referred to the committee; if forced to vote upon it now, I shall vote against it.

Mr *Young* said: I have had the misfortune, since I have had the honor of a seat in this House, to incur the displeasure of some gentlemen. I am truly sorry for it; I regret to differ from them; yet I look upon it as a right guarantied to me, as a right in all civilized assemblies guarantied to every free man, to have and express his own opinions. I look upon it as a little ungenerous to accuse me so harshly. Now, I have been charged here, and still stand charged of going in for bunkum; though, if I understand the meaning of the term, I am in for bunkum, and I believe that every individul who has the honor to represent the free citizens of Texas, should be in for bunkum daily. I believe it my duty, and my solemn duty, when I go home, to be able to give as much satisfaction to the people who sent me here as the case will admit of. The question here is, whether we shall adopt that clause in relation to forfeitures and escheats adopted in the Constitution of Texas. Gentlemen have argued that the consequences would be very serious, at least with regard to one portion of the country, that lying immediately upon and adjacent to the Rio Grande. For various reasons, it does look a little hard upon those people. The gentleman tells you they were between two extremes, and were ordered away. And why? He did not tell you the reason. It is because they were giving comfort and assistance to the enemy. The general saw the part they were playing, and was determined to put a stop to it. They had to come up and say whether they would take the part of Texas or of Mexico; and the result was that most of them went back to Mexico; it was natural for them to do so. Those who came into the interior of Texas, do not come within the provisions of the act. These people abandoned the country; they had the right to do so; and the Convention had the right to adopt this clause in the Constitution, they did so, and the people of Texas adopted it. There were other citizens of Texas, who left the country with a view to avoid a participation in the war. This section is not intended to single out any particular portion of the country. These people took advantage of the opportunity afforded them, and went into the interior of Mexico, whereby they forfeited their claims here. The war has gone on; in our struggle for independence, the Mexicans have been trying to put us down, and the American people have given us all the assistance they possibly could; And now it is said we must leave this matter open in order to provide for particular Mexican gentlemen, who have left the country when their assistance was most important to us, while for these individuals who came into the country from the United States, prepared with their rifles to defend the land of their adoption, we are to make no sort of provision. Now, I ask if this is right? Is it right to pay the individual who has violated the laws and left the country in her necessity, while we refuse to pay the individual who has come to our assistance. The proposition of the gentleman from Victoria is nothing more nor less than a revival of that section in the Constitution. It is argued that the adoption of this clause will probably prevent our annexation to the United States. I cannot for my life see how it can have that effect. It has been all this time in our Constitution; it is so still. The Resolutions of the United States Congress were passed with this section in our Constitution. Why then will they refuse now to adopt this Constitution, if we insert it here? As to the remarks of the gentleman from Washington, alluded to by the gentleman from Nacogdoches, they were made in allusion to the 21st section, which is a very different thing from this. According to my notion this section ought to go down, and I want at least the House to vote upon it. As for referring it, the question has been sufficiently debated, and I think the longer it is discussed, the less we shall know about it. If the majority of this Convention are opposed to it, they can as easily say no as yes. I can see no objection to taking the question here.

Mr. *Kinney* said: My position, Mr President, is very different from that of the gentleman from Red River, very different indeed. I, sir, do not go in for "bunkum;" and if I did, I should not expect to gain any thing by making a speech, because I am, I believe as much out of my element in speech making as I could possibly be. I am here, sir, to contend for those things which I think right and just; I came here with a view to assist in making such a Constitution as I believe will be for the interest of the great mass of the people. I go farther. I would not, sir, go in for individual interest, with as much disposition as I have to advance my own interest, I would not destroy the rights and privileges of others, if I know myself. I wish I had it in my power to give the views I entertain with regard to this subject with the clearness and conclusiveness of the gentleman from Nacogdoches. I believe he takes the right view of the matter: I believe he understands the situation of the country as well as any living man. He has been here a long time; he has participated in all our toils and struggles in the contest for independence, from the beginning up to this day, and has attained a reputation among the people to which few can aspire.

The question here seems to be about the right of taking from individuals who have assisted the Mexican enemy, their property or their lands, by confiscation Sir, there are a great many things to be taken into consideration in this matter. We must look at the peculiar position which these individuals may have occupied; they may have been placed in a situation where they were obliged to give assistance to the enemy for their own security and safety, when they did not feel any disposition to do so. I have been in such a situation myself; and when Mr. Mexican came, I treated him with a great deal of politeness, particularly if he had me in his power; when Mr American came, I did the same with him; and when Mr. Indian came, I was also very frequently disposed to make a compromise with him. My situation has been very peculiar, and I cannot see whose rights I have infringed upon. Those people spoken of by the gentleman from Red River may have marched as far as the Sabine, or a little this side of it, with their rifles on their shoulders, to fight the battles of Texas; they may have done some very good fighting there; but I have never seen any of them in the country where I reside. I would like to make some remarks for the information of the House; if I had the power to treat the subject as it deserves, I would do it fully. But I will state some cases which have come under my own observation; and one which refers to myself. In 1840, some gentlemen who lived a little further in the interior than I did, thinking perhaps that my situation on the Western frontier might not be of any advantage to them, denounced me as a traitor, asserting that Mexicans had come to my table and drank my coffee. I did not deny it. I was invited here to Austin, upon a charge of treason; I came up and answered to the charge; and, so far as I know, I believe I was very honorably acquitted. However, after this I went on a mission to Mexico, and during my absence the same thing occurred again Some individuals thought Kinney's Ranche a very desirable location, and as I had the reputation of being a traitor before now was the time to renew the accusation. During my absence, it was reported that I had been executed in Mexico, and some individuals went and made a location on my land, and I believe they have received their patents. Now, sir, I suppose if I had not been back in time to defend myself, if I had remained a prisoner, or had been shot for the service I was trying to do to Texas, my lands would have been forfeited. There are many similar cases. I recollect an instance of an individual who was killed at the commencement of the Revolution, at the town of the Mission. His family had no means of supporting themselves there, and amidst the desolation of war they were driven from their home; their houses were plundered and burned, and they had to seek a habitation elsewhere. The widow went to the States, and is now residing at Mobile. After her departure, some white gentleman, I suppose of the class referred to by the gentleman from Red River, got a certificate and located it upon this widow's land. This gentleman, when remonstrated with, said that she had left the country and forfeited her claims; that he was here to fight for the country, which she could not do; she was a widow, and had no friends to contend for her claims, and he would hold the land. I believe I could enumerate many such cases.

I consider this a very unjust thing, and I do believe, with the gentleman from Nacogdoches, that the insertion of such a clause in our Constitution will prevent its being accepted. It is said by some that might makes right. I have known some instances where I have been obliged to knock under myself; and I have no doubt but the position of many of the citizens of Texas is the same as my own I ask you, sir, what jurisdiction Texas has extended over the country between the Nueces and the Rio Grande, where has there any civil authority been exercised under the government of Texas, to give this country the right to it? When Messrs Williams and Hockley, went to Mexico, this question was asked by the Mexican Commissioner. There is Mr Kinney, he has occupied it, was the reply. We know that very well, said the Mexican. But he has been paying no duties, they rejoined. A fool he is for it, said the Mexican; what protection has Texas ever given him to claim that country under him? I will not ask you, what protection have I ever enjoyed from Texas? I have been permitted to stay there by the Mexicans, and not in consequence of the protection afforded by Texas.

Though there are so many who are anxious to drive away these people and confiscate their property, I have never seen them in the West, fighting the battles of their country. I have been there long upon the frontier, and I cannot sit still and see the families of those who weltered in their blood, in defence of their country, despoiled of their rights; I know many and many a widow and orphan, whose husbands and fathers were slain in the cause of Texas, who have gone now to the United States for security and to gain a subsistence; and their lands have been located by those white gentlemen or somebody else. I am for giving all their rights. If Mexicans, let them be called white or black, have rights with us, let them have those rights. I will say here, that I have had as good and faithful soldiers who were Mexicans, as I have had of the Americans.

I hope nothing will get into the Constitution, interfering with the rights of any individual. I want to leave this matter open; I want the evidence brought up, that a fair investigation may be made, and no snap judgment taken against any individuals I would rather see the whole of Texas sunk, than to see these old settlers, who have fought the battles of the country, and given her the character and position which she now enjoys in the world, deprived of their rights. Might does not always make right. It is not right and just to pursue this course towards those who have been placed in this peculiar situation; who have not been able to defend themselves, while it has been out of our power to give them protection. In such a case as this, we have not the right to confiscate their property, to take from them their homes, the lands they were born upon and lived upon up to the time of the Revolution, without giving them a showing, and without considering their situation. And I hope and trust that nothing will be done by this body which shall affect this interest, without giving them a legal hearing.. However glaring the case may be, I shall be opposed to depriving any individual of his rights, or annulling any contract, without a hearing. A mere report does not satisfy me that we have the right to confiscate the property of another. I therefore hope the section will be referred and duly considered. I will go as far as any one to promote what I think the interest of Texas. I believe that where a man owns eleven leagues of land, some people may have interest enough in getting part of his lands, to procure sufficient evidence against him, when perhaps he may only have left to place his family in security. I believe this clause would affect as many people in other parts of the country as in the West; for I know a great many white gentlemen have taken the *Eastern* shoot, quite as many as those who have gone West. When the people of Carlo's Ranch were ordered to leave by the officers of Government, they were told that it would not affect their rights at all I know many of these who went East, and have gone back to their homes again. Others went to the Rio Grande, and they have been anxious since then to return to their homes. Would it be right to confiscate their property? It must be considered that they left their homes by order of the officers of Government. I trust the section will be referred.

Mr. *Horton* said: I rise in the first place to remark that my friend from Liberty, as will be recollected by the Convention, gave notice that he should offer an amendment, which, if presented, would have superseded the necessity of some of the argument advanced by the gentleman from Nacogdoches, as well as of any remarks on my part. But I feel myself called upon to say a few words in addition to the remarks of the gentleman from Nacogdoches; though, so far as I am capable of comprehending the subject, he has covered all the ground susceptible of being occupied. He did not, however, go far enough, in my judgment, with regard to the situation of the Mexicans in the West. He observed that he issued an order in 1835, commanding this class of individuals to leave that section of the country; which I know to be the fact. In the spring of 1842, Col. Owen, in command of our troops at that time, issued a similar peremptory order. In the fall of the same year, I had command at the station below, and, at the instance of the President of the Republic, I gave a peremptory order to the citizens living at Carlos's Rancho, to remove immediately from that section, either westward or eastward. The objection made by Carlos was, that he had been told, if he left the country his lands would be forfeited. I replied to him that the law would not bear upon him, because he was only complying with a peremptory order received from one who had authority to give it, and unless he did remove, with all those living around him, if I found them in the neighborhood after the lapse of a few days, I should treat them as the common enemy of the country. I presumed that in consequence of this order they left the country. I do not intend here, by any means, to advocate Carlos's conduct. But this provision, going farther West, included the lands between the Nueces and the Rio Grande. I would ask gentlemen what protection we have ever given to the people residing in that section of the country? What is their peculiar situation? When the Americans have gone there, they have preyed upon them; they have been necessarily compelled, by force or otherwise, to give up such property as they had. So *vice versa*, when the Mexicans have come in, they have been necessarily compelled to furnish them the means of support. Mr President, I presume, if a number of individuals upon this floor knew the situation of these people as well as myself and others, they would not make this clamor against them. Since 1837 they have been preyed upon by our own countrymen. I am ashamed to say it, but I speak the truth before high heaven, bands of robbers have driven off their cattle by hundreds and thousands, to this portion of the country, to the Brazos and farther east. The cry is that they have taken up arms against this country. Against whom have they taken up arms? Against a set of robbers, sir. Who would blame them, situated as they are, for protecting their property and persons? Not only have they been despoiled of their property, but, I am ashamed to repeat it, such violations as have been committed upon females there, fix a blot upon the American character. And is their property to be confiscated under these circumstances? There are some individuals among them, it is true, but very few, whose property ought to be confiscated. But let us not make this provision general. I would ask, Mr. President, who are to be benefited by the forfeiture or confiscation of these lands? As the gentleman from Nacogdoches has already stated, when they are confiscated and put up at public auction to be sold, up steps some gentleman and tells you that he has a patent for the land. It would make a much better showing before the world, if the amendment of the gentleman from Liberty could be engrafted upon it; but under all circumstances I shall vote against the section, either with it or without it. I think ample provision is made in the preceeding section for all cases which require it.

Mr. *Cunningham* said: I introduced this section only for the purpose of calling for the ayes and noes. I believe that every member here is satisfied that the 8th clause of the Constitution of the Republic is not provided for in the section alluded to; since the word "forfeited," intended to embrace it, was stricken out. If, sir, we adopt this Constitution, and repeal the old one, we repeal that clause which forfeits the lands of traitors to the Republic of Texas. It is to prevent that, or at least, to show the opinion of the Convention in relation to that subject, that I introduced this resolution this morning. I hope it will draw out a fair expression of opinion. I am sorry that the gentleman from Nacogdoches made this motion to refer to a committee; I am satisfied it is not necessary to do that to kill the section, and when the question comes up, I shall call for the ayes and noes upon it as a test question. The gentleman from Nacogdoches has given his recollections of 1836, and the gentlemen from Matagorda and San Patricio theirs of 1842 I cannot contradict one word of what they have said; all I complain of is, that they did not tell you all. I, too, was there on both occasions, not indeed as a commanding officer, not as one having authority, saying to this man, go, and he goeth, and to another come, and he cometh; but as a ragged soldier. I had my eyes open, however. One of the gentlemen tells you that he ordered off the people of Victoria and Goliad, and that some went East, and some West. But, sir, were the citizens of Goliad and Victoria all there when he arrived? How many did he find there when he came with his army? Where were the rest, sir? Gone with the army of the enemy. When he arrived, I think there were not more than sixty or seventy persons in the town of Goliad, which in 1835 contained a population of eight hundred. Where were the seven hundred and fifty? They had left the country with the Mexican army, and gone beyond the Rio Grande. Why had they done so? Because they had taken up arms against the Republic of Texas; they had imbrued their hands in the blood of our people; they had perpetrated one of the most diabolical murders ever known in history. I think the gentleman from Nacogdoches will admit that a large proportion of the inhabitants had left when he arrived. Sir, I shall never forget the day when I heard the gentleman himself depict in the most eloquent terms, over the grave of Fannin's men, the atrocities committed by these people. The situation of things is not changed with us, though it may be with him. He has been removed far from the field of this cold blooded murder; we have lived upon the ground, and have visited that grave often and often. We have seen those citizens who were accused of perpetrating this murder; it is upon those persons we wish the vengeance of the laws to be enforced. The gentleman from Matagorda has also given us some reminiscences of 1842 I, too; sir, was there. The gentleman tells you that he ordered the people of Carlos's Ranch to leave; but he did not tell you why. I will tell you. In 1842, when General Woll moved upon Texas by the upper route, General Ampudia also came into Texas by the lower route, and was prevented by high water from arriving at Victoria, as Wall did at San Antonio. At this time the owner of Carlos's Ranch went beyond the Nueces to meet Ampudia. When these people were taken prisoners, they were told they need not go West, unless they chose; that though they had forfeited their lands, they might come into the interior and still preserve them. Not one came this way, but every man of them took up the line of march for the Rio Grande. But if it were not so, if the circumstances were otherwise, if they had been driven off without the commission of any crime, if the allegations against them cannot be proved in the courts of justice, their lands cannot be forfeited. This cannot operate against those who are innocent. The gentleman from San Patricio tells you of the widow and the orphan. Now, sir, these are not hurt: this section will not injure a solitary widow, or impoverish a single orphan; It will not affect the gentleman from San Patricio himself. If gentlemen wish to smother it, they can take their course, I do not intend it shall be, if one voice can prevent it. I pledge you my word that it shall go forth to the people, with the opinion of this Convention upon it. One word more, in relation to the remarks of the gentleman from Matagorda. He tells you that the people of the Rio Grande have suffered largely by the cow-drivers of Texas. They have suffered, sir, but how? The people of Goliad and Victoria, when they left their homes, drove their cattle, and with them the stock of the people of Western Texas, to the banks of the Little Colorado. And these very men, under Savriego, joined the Mexican army and committed depredations upon the people of Texas, until the latter commenced upon them. Savriego was defeated and driven away, and the cows which belonged to the Western people were driven back. These men are not such bad men; I know very many of the men engaged in this business, who are honorable men. I hope this matter will be tested on the question of reference.

Mr. *Navarro* (as interpreted by Geo. Fisher, Esq) said: I do not rise, Mr. President, to make a speech, but to express before this Convention, and the whole people of Texas, that I have listened with attention to, and have heard with pleasure the remarks make by the gentleman from Nacogdoches, Gen Rusk. The eloquent speech o· that gentleman, in relation to the matter now under discussion, is founded upon the rock of eternal truth, as regards general rules, because they are expedient, suitable, and consistent with the rules of national polity; and more than all this, because in my humble opinion, they do honor to the magnanimity of that gentleman, and to the generous character of the Anglo-Saxon race, from which he claims his descent. The reasonings of that gentleman cleanse, in my humble estimation, in their equitable sense, that blot which from time to time has soiled the rich drapery of the Mexican character, and provide amply for the exigencies of Texas for the time to come.

Therefore, Mr. President, and for want of an adequate mastery to the task, to embellish, nay, even to add any one single reason to the support of the premises so forcibly demonstrated, and so graphically depicted by the gentleman from Nacogdoches, I declare in behalf of my constituents of the county of Bexar, in the face of this Convention, and before the civilized world, that I adhere to the doctrine laid down by the said gentleman, and will vote with him on this question, and thus give an evidence of the old and so generally accepted maxim that "*facts speak louder than words.*"

Mr. *Horton* said: It is true that the individuals alluded to by the gentleman from Victoria had assembled in a body, and elected a captain; and it is also true that a communication from Gen. Woll had been brought to them, which no doubt had its effect in calling them together. But they made another allegation, stating to me that it was to defend themselves against the violence of persons residing at Victoria and that neighborhood. I must say, however, that I did not believe it, neither do I believe it now. As to Savriego having driven off cattle belonging to individuals residing in the western portion of Texas, I would only say, to the gentleman, that Savriego did not commence the operation of *gra* first, sir. He had a quantity of goods at Goliad, at the time when Goliad was taken. These goods were locked up in the store, and he had the promise of the commanding officer (who endeavored, I believe, to keep his promise) that they should be taken care of, and in due time restored. The Colonel commanding gave him a permit to go at large; and during this time the storehouse was broken open and pillaged of every thing in it. And I suppose Savriego thought that if he could get a little back he would be right. Still, I do not approve his course; his general conduct proved him a very bad man. But, at the same time, I do not think that two wrongs make a right. And sir, our people exceeded the limits of the law of Scripture, requiring a fourfold payment. They got more than fourfold; they made a clean sweep, without regard to the fact, that the individual had taken a part for us, or against us. Could you expect Mexicans, under these circumstances, to fight for this country? In the change of government they were promised a better. And how was this promise realized? They were stripped of every thing they had upon earth, and then called upon to defend the country. We are told by the gentleman from Nacogdoches, that, from the last of February to the first of May, that whole region of country was in possession of the enemy, and all communication was cut off. Now, I believe it is a generally received maxim, and a pretty good one, that no law is to be looked upon as being a law, as having the weight and force of a law, until it is promulgated. If this is correct, I cannot believe that the law alluded to will affect these people. I know that there are some individuals, but few, whose property ought to be confiscated, but I cannot support a provision intended to take from any that which clearly and rightfully belongs to them. I have done.

The ayes and noes were then called upon the reference, and stood as follows:

Ayes—Messrs. President, Baylor, Caldwell, Cazneau, Darnell, Davis, Evans, Everts, Forbes, Gage. Henderson, Hicks, Hogg, Howard, Hunter, Irion, Jones, Kinney, Love, Lusk, Lipscomb, Miller, Moore, Navarro, Parker, Power, Runnels and Standefer—28.

Noes—Messrs. Anderson, Armstrong of R., Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Hemphill, Horton, Holland, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, M'Gowan, M'Neill, Scott, Smyth, Tarrant, Ochiltree, Van Zandt, White and Young—26.

So the section was referred.

Mr. Hicks moved that the House adjourn for one hour. Lost.

Mr. Moore moved to take a recess of two hours.

Mr. Parker moved, as a substitute to Mr. Moore's motion, to take a recess till 3 o'clock, P. M.

The chair decided the motion of Mr. Parker's to be in order: from which decision Mr. Anderson appealed, and the Chair was sustained by the Convention.

On motion of Mr. Ochiltree, a call of the House was made; and on motion of Mr. Everts, a further call was suspended.

Mr. Everts moved a reconsideration of the vote adopting the resolution to meet at half past 8 o'clock, A. M., and adjourn at half-past 6, P. M.; upon which Mr. Darnell moved the previous question, which was carried.

The main question being the reconsideration of the vote adopting the resolution.

The ayes and noes being called thereupon, stood as follows:

Ayes—Messrs. President, Anderson, Bagby, Baylor, Brashear, Brown, Caldwell, Cazneau, Cunningham, Darnell, Everts, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Kinney, Latimer of R. R., Lumpkin, Lipscomb, M'Neill, Miller, Navarro, Parker, Rains, Runnels, Standefer and White—32.

Noes—Messrs. Bache, Burroughs, Clark, Davis, Evans, Gage, Howard, Hunter, Jones. Latimer of L., Lewis, Love, Lusk M'Gowan, Moore, Power, Smyth, Tarrant, Ochiltree, Van Zandt and Young—21.

So the vote adopting the resolution was reconsidered.

On motion of Mr. Brown, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called, quorum present.

The President of the Convention announced a communication from the Commissioner of the General Land office, which was read, and is as follows:

GENERAL LAND OFFICE, AUSTIN,
August 5th, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

Sir:—In compliance of a resolution with your honorable body, requiring me to report to the Convention, certain information, a copy of which resolution I received in a note from James H. Raymond, Esq., I have the honor to transmit herewith a statement, in which I have answered, as far as the records of this office enabled me to, the requirements of your resolution: in addition to which, I will remark, that I have no means of knowing the whole amount of scrip that has been issued by our government; but think that the amount yet out, or that has not been returned to this office, is about one-eighth of the quantity which I have shown to be in this office at the present time: the same is the case in relation to bounty-land warrants—not being able to inform you of the exact number issued by the department of war, or to state the precise quantity of land they contain. I have reported the same as near the truth as possible to be obtained from the data in my possession.

I have the honor to be,
Very respectfully,
Your obedient servant,

THOS. W. WARD.

STATEMENT.

Superficial extent of Texas, as comprised within the limits defined by statute of 1st Texian Congress, page 133,	397,319 sq. m. or 254,284,160 acres.
Total amount of land issued by the various Boards of Land Commissioners,	43,543,970 "
Total amount recommended, from the above, as good and lawful claims by the Commissioners appointed to detect fraudulent certificates,	19,212,206 "
Total amount issued by Department of War, as bounty and donation claims,	6,300,000 "
Total amount of Land Scrip sold by the Government of the Republic of Texas,	368,787 "
Total amount of legal claims to lands issued by the authorities of Texas,	25,880,993 "
Total amount issued by the various Boards of Land Commissioners, and supposed to be fraudulent,	24,331,764 "
Total amount of land issued by the authorities of Mexico, a portion of which is supposed to be invalid,	22,080,000 "
Total amount of public domain subject to location, and unsurveyed,	181,991,403 "

On motion of Mr. Hemphill, 500 copies were ordered to be printed.

On motion of Mr. Hemphill, the communication of the Commisioner of the General Land Office, and accompanying resolutions, were referred to the committee contemplated by the resolution of Mr. Evans. Messrs. Evans, Everts, Smyth, Hemphill and Anderson were appointed said committee.

Mr. Everts offered the following as an additional section, to come in after the 20th section of the report:

"All claims, locations, surveys, grants and titles to land which are declared null and void by the Constitution of the Republic of Texas, are, and the same shall remain forever, null and void," which was read, when

Mr. *Everts* made the following remarks:

It seems to me, Mr. President, that on yesterday, when forfeiture became the subject of discussion, the importance of this matter was overlooked. I am not satisfied with the 20th section as it stands. I am not prepared, however, to say but that it does cover, perhaps, all the grounds contemplated by this. That section reads, "The rights of property, and of action, which have been acquired under the Constitution and laws of the Republic of Texas, shall not be divested: nor shall any rights or actions which have been divested, barred, or declared null and void, by the Constitution and laws of the Republic of Texas, be re-invested, by this Constitution: but the same shall remain precisely in the situation which they were before the adoption of this Constitution." The portion of the country which I represent, as well as all the Red River country East of the Trinity, is covered with claims to lands, which are believed to be spurious. It is said that a great portion, the larger portion indeed of the enormous grants made to J. T. Mason and others, under the laws of Coahuila and Texas, have been located in that region of country. A large portion of the lands located, contrary to the laws of Texas, after the closing of the land office by the Constitution at the commencement of the revolution, are located in that region. And it is said that a good many claims, meritorious in themselves, have been located contrary to the Mexican law on the twenty border leagues adjoining the United States. The people of that part of the country, have many of them opposed annexation, on account of their fears that these claims might, by some means or other, be brought into a situation to interfere with their head-rights subsequently laid, and that they might thus be ousted from the possessions which they think they have honestly and justly acquired. That the whole of that country is shingled over two or three claims deep, there can be no doubt. The people know that by annexation, Texas does surrender a large portion of judiciary power; and that these claims, like many others, must and will be investigated in the Courts of tha United States. The principal opposition to annexation, had its origin in these fears. When I was before that people as a candidate, these questions were discussed by my colleague and myself. We then told the people, that the same laws and the same rule of decision which would govern these cases in the Courts of Texas, would govern them in the Supreme or Circuit Courts of the United States. But to quiet all fears, and allay all the feeling upon that subject, we solemnly pledged ourselves to use our utmost endeavors to place an article in the General Provisions of the Constitution, which would cover these cases completely and fully. Now I would not risk my reputation as a lawyer, if I have any, by contending that these claims are not, to use a common expression, killed off by the 20th section; but as there may be just grounds for doubt upon the subject, I therefore introduce this section for the purpose of making that plain, and leaving nothing for the construction of the courts in any quarter or any country. If it is objected that the same question is covered by the 20th section, and that this is only explanatory of what is contained in that; then, sir, I say it will do no harm to place it in the Constitution in such language and terms as the people of the country can fully appreciate, comprehend and understand. I think something is due to the people upon this subject. In framing a Constitution to be ratified and approved by them, I wish not only that their rights should be secured, but that they should be secured in the estimation of the people. It may indeed be said out of doors, that the terms *survey, land claim,* or any thing of the sort, should not appear in this Constitution. But it seems to me, that the same thing is covered and hidden in the 20th section; and I believe that those who may oppose our annexation on account of this, those in the United States who have an interest in establishing these fraudulent land claims, will scan every word in this Convention, and are as well able to see and understand any thing affecting their interests, whether this clause be put in, or the 20th section left as it is. It will make no difference at all. Is there a member upon this floor, who can for a moment suppose, that John T. Mason and other land speculators, who are perhaps as well acquainted as any of us with the situation of land matters in the Republic of Texas, will not understand and take ground against the Constitution, as well with regard to the 20th section, as to that which I propose? Certainly they will. I believe, sir, that annexation will take place. I believe that the Constitution would be received, with this clause in it. And I do not believe, sir, that the Congress of the United States will feel disposed to reject the Constitution on account of the eminent domain question. They have no control over it now. They do not propose to interfere at all with our land system. They say that the eminent domain of Texas shall remain forever in Texas, to dispose of as she may think fit. Then it does seem to me that the Congress of the United States could have no right whatever, justly or legitimately, to interfere and reject us on accout of any thing in this Constitution, which we may see proper to place here upon the subject. Will they not know there that a portion of these claims are declared null and void by our Constitution as it now exists? Will they not see in our General Provisions, that all laws and parts of laws not inconsistent with this Constitution, are to remain in force? They will, sir. I must beg leave to differ from the gentlemen who entertain fears upon the subject: and if there is one single right unsecured by the 20th section, which ought to be secured to the people of Texas, I feel that I shall not be doing my duty, that I shall not be redeeming a solemn pledge, unless I endeavor to secure, fully and completely, every one of these rights. I wish them not only to be secured, but I wish it to be done in such language as cannot be misinterpreted or misunderstood, either by the people, or the courts of justice. I do hope, then, that this section will be adopted by the Convention.

Mr. *Hemphill* said: I can see no objection to the section. It only declares that the condition of these lands shall forever continue the same. The apprehensions, I presume, entertained by gentlemen whose constituents feel an interest in the matter, originate in the supposition, that, although these claims may not be revived by the Constitution, yet they may be revived in some way by the Legislature, if the law on the subject contained in the Constitution of 1836 be suppressed or passed over, or that like any other law, it may be repealed. I think it nothing more than reasonable that this Convention should quiet the fears of all the people of Texas, and place every thing in such a condition as to keep all the public lands in precisely the same situation as now, and that all these claims which are null and void shall so remain forever. However great the advantages of annexation, and great they are, we ought not to secure them by taking away any of the rights of the people of Texas, or placing them in a different situation from that which they occupy at the present time. I do not think lawyers are under the apprehension that any right can be divested by a subsequent Legislature: but if the people entertain fears upon the subject, we ought to quiet them, we ought to give them confidence. I consider that as one of the principal duties of this Convention. This section cannot possibly affect injuriously a single right of any person in the country. It only preserves rights as they are now; it gives no man an increased right, and takes none away. It cannot possibly, as the gentleman from Fannin well remarks, excite against us any opposition in the United States. All the opposition which could be arrayed against us in consequence of a direct provision of this kind, would be arrayed against those which cover the matter in a more indirect manner. This would put an end to all controversy in relation to the subject. I think it is the desire of the people that we should close up all these claims, covering a vast amount of lands obtained by fraud. I have understood that, after the closing of the land office, something like two hundred leagues under one of the colonization contracts were thus obtained; whether surveyed or not, I do not know. I do not know how many claims have been located contrary to the acts of the Convention or Congress afterwards, but they cover a vast quantity of land, supposed by the Commissioner of the General Land Office to exceed twenty millions of acres. We ought to put such a provision in this Constitution, as will render them of no force and effect whatever. The provision in our existing Constitution was well understood in the United States previously to the passage of the annexation resolutions; and there seemed to be no objection upon this account: all the dispute was in relation to that portion of our lands now vacant, whether the United States should take them and pay our debt, or whether we shall retain them and pay our debt. I think the Convention would do nothing more than right in adopting the section.

The additional section was adopted.

In the 22d section, 2d line, Mr. Hicks moved to strike out all after the word "families."

Mr. Love moved to strike out the whole section.

Mr. Davis offered the following as an addition to the 22d section:

"And no married man shall be permitted to sell his homestead of not to exceed one hundred and sixty acres of land, without the consent of his wife; given in such a manner as may be hereafter provided by the Legislature."

He said he thought it necessary to make some such provision to compel the head of a family to retain something. Even if a worthless fellow, a little land and a homestead would provide a living for his family. He hoped the section would not be stricken out, but retained with the amendment which he proposed.

Mr. *Ochiltree* moved to amend, so as to include a town lot. Accepted by Mr. Davis, and the question was announced upon Mr. Davis' amendment, with the addition of the words "or a town lot, not to exceed 200 dollars in value."

Mr. *McGowan* suggested that there was no town lot in a town of any consequence, which would not be worth more than three hundred dollars. He would prefer the amendment as it stood, believing it would cover the case as far as desirable, leaving it open in some degree to the action of the Legislature hereafter.

Mr. *McNeill* said he should like to see some value placed upon the land and the town lot. There was as much difference in the price of land in different places, as in that of town lots.

Mr. *Davis* said: 'The spirit of the age is opposed to taking a woman's bed from under her, if she has a trifling and worthless husband. I hope this Convention will have some feelings of humanity in view of the distress which attends a helpless woman and her children.

Mr. Ochiltree, with leave, withdrew his amendment.

The question was put on the original amendment offered by Mr. Davis, and the ayes and noes being called, stood as follows:

Ayes—Messrs. President, Armstrong of R., Baylor, Brashear, Burroughs, Cazneau, Clark, Darnell, Davis, Evans, Hemphill, Henderson, Hogg, Holland, Horton, Howard, Jewett, Jones, Kinney, Latimer of La. Lewis, Lusk, Lipscomb. McGowan, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standifer, Tarrant, Ochiltree and Young—35.

Noes—Messrs. Anderson, Bagby, Bache, Brown, Caldwell, Cunningham, Everts, Forbes, Gage, Hicks, Irion, Latimer of R. R., Love, Lumpkin, McNeill, Scott, Smyth and White—18

So the section was adopted.

Mr. Love withdrew his motion to strike out.

Mr. Cazneau renewed the motion to strike out as amended.

On motion of Mr. Evans, the words "have power to," in the 1st line of the 22d section, were stricken out.

Mr. Jones offered a proviso: "Provided always, that the property exempted shall not exceed in value the sum of ——— dollars": and proposed to amend the amendment by inserting 6,000 dollars.

Mr. *Van Zandt* moved the rejection of the amendment. He said he was willing, to leave these things to the discretion of the Legislature. He would therefore move to leave it blank.

Mr. *Jones* hoped the motion would not prevail. He said he was not particularly married to the section itself; and after it was placed in the best form possible, he should vote for striking out. He believed that the Legislature would have full power to exempt from execution any property they might think proper. But if it was to appear in the Constitution, he wished it to appear there in the best possible shape.

Mr. *Davis* said it would not operate against creditors; as they will prove what property is reserved.

Mr. *Van Zandt* said it would act prospectively, and as a check to the credit system. He understood that in Alabama, those who had only 160 acres of land, were considered the most punctual people in the country; because they relied for their credit entirely upon their punctuality.

Mr. *Anderson* said he hoped the section as amended would not be adopted. He was opposed to the latter portion of it. If there should be a law to protect the head of families, it should be equal in its operation: if not equal in its operation, it would not be right and just. One tract of 160 acres would be worth five times the price of another: you would have one worth 1,600, and another worth 320 dollars. It would be contrary, as he conceived, to the spirit and genius of our Constitution, to authorize a reservation which would operate thus unequally and unjustly. He was willing to leave the matter with the Legislature. We could not adopt here a system which would embrace every particular case. If the object was to check the credit system, single men as well as the heads of families should be protected from the griping hand of the law.

Mr. *Davis* would say to the gentleman that the Convention was not legislating here for the heads of families, but for women and children.

Mr. *Jones* said he concurred with the gentleman from Gonzales in every particular. He had introduced the proviso for the purpose of making the section equal in its bearing upon all. He would go farther than the gentleman from Gonzales. The improvements upon some tracts of 160 acres would be worth 50,000, dollars while those upon others with the land would not be worth five hundred.

Mr. *Ochiltree* said: Gentlemen seem to be fighting windmills. the object is to prevent any thing like a distinction, I am perfectly willing to vote for the amendment offered by the gentleman from Austin. But I hope and trust that gentleman will not insist upon striking out a clause so pregnant with humanity. We wish only to insert such a provision, that if the husband even by his criminal prodigality is reduced to necessity, his wife and little ones may not be turned out of their homes, to satisfy the remorseless cravings of a heartless creditor. That is all we want, all that we intend. I believe that the voice of the whole country will sustain it. I hope the House will not be driven from its support because some tracts of 160 acres may be worth thousands, and others not worth fifty dollars. This article does not cut off legislative action. The section is mandatory in its terms, and does not prohibit the Legislature from imposing such restrictions as to justice or equity may pertain.

Mr. *Jewett* said he conceived it would have a direct tendency to promote annexation of the women to the men; he was therefore bound to give it his support.

Mr. *Moore* said he trusted the motion of the gentleman from Austin would prevail; and that but a small amount would be inserted, say 2,000 or 1,000 dollars. He thought if we limited the land, we should limit the amount. He would move to fill the blank with 2,000.

Mr. *Van Zandt* said: I would call the attention of the House to this fact. This 160 acres of land may not be of much value now. But in a short time it will be worth a good deal more. Now if we should secure to an individual 160 acres not exceeding 500 dollars in value, and he should live upon it and raise his family upon it, in after times, perhaps, when his children have grown to a greater age, and have more need of the land, it may have become valuable, and exceed 1,000 dollars in value, and it would seem just as hard a case then to take it from the family as now. An individual, when he credits another, will have regard, not to the supposed increased value of the property, but to the amount he may actually have at the time, and may depend upon to pay his debt. I believe that the Legislature has the power to regulate the matter entirely, and that we should not clog their action here.

The motion to fill the blank with two thousand dollars was lost; and a motion was made to fill it with one thousand.

Mr. *Caldwell* said he hoped it would not be filled at all. It would have the effect of preventing an individual from improving his land, for fear of increasing its value beyond the amount specified, and thereby deprive himself of a home altogether.

Mr. *Henderson* would ask in what condition it would place the owner of 160 acres, if he should expend 150,000 dollars upon it? Was it not a necessary to avoid that difficulty, as the one which had been suggested? He was willing to secure the heads of families or single persons, if possible, a certain amount of property, but did not feel himself at liberty to vote for a section which would enable the heads of families or other individuals to practice stupendous frauds, upon the public.

Mr. *Caldwell* said: I did not say that I was in favor of the section or the amendment. We have had laws upon our statute books exempting property from execution; and I have never seen any difficulty really in preventing property from being sold. There is no danger that any individual will be oppressed. The great difficulty here is to collect at all, or get the money at all in any species of debt. I do not think the poor or the indebted is in any danger; and I think it wholly unnecessary to provide for them under this Constitution. But if we are to pass such a provision, I do not see why we may not as well say 160 acres without fixing a minimum at all.

The motion to insert 1000 dollars was lost.

Mr. Hunter moved to insert 5,000 dollars.

Mr. President *Rusk* said: I shall vote against the amendment, because I look upon it as offered for the purpose of embarrassing the section as it stands. If it is wise, and proper, and salutary to enact these laws exempting from execution and sale, a certain amount of property or the homestead, then it is wise and proper for the Convention to make them permanent, and not leave them subject to the whim and caprice of the Legislature. The only question, then, it seems to me, is whether or not this is calculated to be beneficial to the community. The time has been, when a woman's bed could not be exempted from sale under execution; when the last article of provision or comfort must be carried away from the family, and disposed of to satisfy the gormandizing appetite of speculation. It is one of the evils attendant upon the credit system, by which thousands have suffered the extremity of penury and want. I believe that the credit system is a great injury to any country, and is productive of very little good. Where one individual or family is benefited to any extent, thousands upon thousands suffer. So far as this operates as a check upon the credit system, it is so far good. There is no use in saying that a man may act fraudulently, because, before a man will extend credit to an individual, he will examine well into his land, and will know the property which is exempt from his gripe. There is then no fraud; the creditor does it with his eyes open. All will acknowledge the evil of credit when they are in debt and cannot pay. I am glad to see society acknowledging this, and abandoning the system, so far as circumstances permit. It seems to me that this provision will have a salutary and beneficial effect. This country must be an agricultural country. To develope its resources, we ought to give permanence to the titles of the individuals who occupy the soil; we ought to place them beyond the reach of any contingencies arising from misfortune or mis management. We shall thereby greatly encourage industry and improvement, and develope the agricultural resources of the country. It will encourage a family in improving its homestead, when it is placed in such a condition that the husband cannot dispose of it without the consent of the wife. I shall vote against the motion, with a view to offer a substitute for the latter part of the section.

The motion to insert 5000 dollars was lost.

A motion to insert 500 dollars was lost.

Mr. Ochiltree moved to fill the blank with 600 dollars.

Mr. *Forbes* said he was willing to go as far as suggested by the gentleman from Nacogdoches; but he was not willing to exempt from forced sale an amount of property, which may be a larger fortune than any man in Texas now possesses. And he thought that, while gentlemen were so anxions to provide for the women and children who occupy a homestead, they should have some consideration for those who have none. The persons who sometimes enjoy such property, enjoy it at the expense of those who have none. He was not willing to sustain a measure which would give a man a competence, whilst his creditor is in want.

Mr. Ochiltree and Mr. Jones withdrew their amendments, and

Mr. Rusk offered the following as a substitute to a part of the 22d section, including the amendment of Mr. Davis: strike out all after the word "families," in 2d line, and insert the following: "The homestead of a family not to exceed two hundred acres of land, (not included in a town or city) or any town or city lot, in value not to exceed two thousand dollars, shall not be subject to forced sale, for any debts hereafter contracted; nor shall the owner, if a married man, be at liberty to alienate the same, unless by the consent of the wife, in such manner as the Legislature may hereafter point out."

Mr. Forbes offered the following, as an amendment to the amendment:

"And further, provided the one hundred and sixty acres of land shall not exceed in value, six hundred dollars."

Mr. *Lewis* said: I hope that no particular value will be attached to the land. There are the most serious objections to it. If by a course of labor and industry any piece of land, however sterile, should be increased in value beyond 2,000 dollars, the very object of that industry would be defeated. I think it the duty of the Convention to make some provision of the kind proposed. And for this reason in particular, that under no law in existence in this country, is the wife entitled to dower, and in none of the States, except where the civil law prevails, is she stripped of it. In this country, though she may have wended her way here through the mud and mire, with a view to secure a portion of land, yet when her husband dies, her land is swept from her. Then we should provide for her here. I trust the amendment will not prevail.

The amendment offered by Mr. Forbes was lost.

The question being on the substitute offered by Mr. Rusk.

Mr. *McGowan* said: He would offer a little amendment to that. He would like to have it read "lot or lots"; and that would include the homestead of the family. He was perfectly satisfied with the amount named in the substitute.

Mr. Rusk accepted the amendment, and the substitute was adopted.

Mr. Gage offered the following, as a substitute to the 22d section as amended:

"The Legislature shall, as soon as practicable, pass laws by which a portion of the property of all citizens of this State shall be exempt from forced sale; and in all cases, there shall be two hundred acres of land exempt."

Mr. *Lipscomb* said: Having offered the resolution in the committee, I will express my views in a few words. Considering the situation of the country, and looking back to the embarrassments I have witnessed in several of the United States, and the distress I have often seen come upon families, who have been so paralyzed by it as to be incapable of exertion. I believe it important to introduce a provision of this kind into the Constitution, lest the Legislature, not feeling the danger, might omit it, until too late. There is nothing unjust in it, because creditors have notice. We have often witnessed a drunken husband rolling in the gutter, or reeling through the streets, while his patient wife and little ones supported him and themselves by their industry. Until some provision of this sort is made, to secure the property acquired by labor, exertions will be made and expedients resorted to to cover it up and conceal it under petticoats, if you please. Secure it by law, and you will thus remove the inducement to these frauds. I trust, therefore, that the section will be adopted as amended.

Mr. *Love* said: I have do doubt it is the intention of the House to pass the section. One of the reasons why I shall vote against it is, because it marks a line of distinction between the rich and the poor. It denies to the man who has only a small property that which it gives to the rich to an unlimited extent. This country is not like some others. We are strangers to each other; it takes time to establish a character for moral honesty. The stranger, who perhaps expends every dollar upon his two hundred acres, has not credit for a single solitary dollar, because he is not known. Where do you find the principle that the man who is the owner of two hundred acres, shall not have credit, or that a man shall trust entirely to his honor, and that the man who owns three hundred, shall be entitled to credit to the extent of the one hundred? Again, there is another most mischievous principle involved here, God himself has said that the woman shall be subject to the man. In that provision you create causes of dissention and strife in families, that never will arise where the man and wife harmonise and agree, but always will, if a man is unfortunate enough to have a termagant wife, and though they are all angels, I know some of them who are very fairly entitled to that appellation. The gentleman has depicted the evil caused by a drunken husband. That is one side. I will not ask if he has never known any evil on the other? I have known many instances in which the man has found it for his interest to emigrate and go where he could do better, when the woman, in the spirit of perverseness would say, you shall not do this, I prefer staying by my father and mother. You will often find that the woman lords it over the man. I think it unwise to adopt any provision which would induce them to have a separate and distinct interest. The husband alone should be the judge of the manner and time of disposing of his property. If you pass this section, it does seem to me that every man who possesses only two hundred acres of land, may say, you have taken credit from me, and given it to the man who has over two hundred. If you desire to attack the credit system, I think it is unwise and unjust to make any distinction, except so far as it is indispensably necessary for the protection of the household; and I think that it should be left entirely to the husband to dispose of his property when he pleases and how he pleases.

Mr. President *Rusk* said: I think the gentleman argues very unfairly that this provision would give the woman the control over the husband. He does not certainly recollect the principle which runs through the laws of England, that the wife is entitled to dower, unless she voluntarily relinquishes it He says it will prevent a certain class from getting credit; I reply that it will prevent them from getting into embarrassments, and becoming slaves to another,

Mr. *Baylor* said: I recollect the history of the whole matter, in the State of Alabama; and it will perhaps throw some light upon the subject to relate it. At an early day in the history of the legislation of that country, the Legislature, by enactment, set apart a small amount of property, which could not be reached by execution. When it was first passed, as the commencement of a new policy, the result was simply this. An outcry was made against the law. The merchant raised his voice against it, because he thought it would prevent him from collecting small debts from the class of individuals which the law was intended to secure. The poor man himself raised his voice against it, because, he said, by exempting my property, you may prevent me from enjoying that credit which other individuals enjoy. Well, the Legislature went on, step by step, until at last a homestead of 160 acres was secured, together with a large amount of property. Now, what has been the practical result of this system? I have it from the most intelligent and faithful sources, and it is simply this. That the merchants and others uniformly admit these individuals, thus secured by the shield and protection of the law thrown around them and their families, to be the most punctual and the most faithful of all their debtors, in complying to the very day and the very letter with their engagements. Experience is the great test at last, and the very parent of wisdom itself. I do not see the evil which the gentleman from Galveston with so much ingenuity brings before the consideration of the House. He says this law will draw a line of distinction between the poor and the rich. Sir, some distinction must ever be made between the poor and the rich. I understand the great end and object of government and law simply to amount to this, the protection of the poor and humble from the oppression of the wealthy and powerful, of the weak against the strong handed, the turbulent and the violent, the simple hearted and credulous against the crafty and cunning; and the statesman who overlooks this plain and simple principle, is not acting from a knowledge of what human nature really is. Napoleon Bonaparte, that mighty man, the man of destiny, acquired more honor, as he conceived, by giving to the world the Napoleon code, than by all the victories he ever won upon the battle plain. One of the leading features of that code is this, to make happy families; nations are composed of families, and if we make them happy, we shall have a happy nation and people. The contemplated provision proceeds upon this great principle in human society. It throws around the humbler portion of the community that protection which will ensure at least a decent competence. It has been well said, that if we pass this section we shall get clear of all the shifts and devices which men resort to when they find themselves in failing circumstances; we shall put an end to the frauds which have almost undermined the morals of the people of the United States. It will secure to the poorer classes, to some extent, the means of educating their offspring. Ignorance is the parent of vice. I think it wise in every respect to make this provision stable and fixed, by placing it here, and not to leave it to the fluctuation or the whim and caprice of future legislators. I have thought it my duty to say thus much. I have no family to provide for; no wife or children. But I feel that "I am a man, and every thing which relates to humanity interests me."

The substitute was rejected.

The ayes and noes were called for, on the adoption of the 22d section as amended.

Mr Clark said: He should vote for the section as it now stood, but thought it due to himself to say that he was not satisfied with it. He was in favor of the object, and fearing that the section would not be submitted in a more acceptable shape, he should vote for it as presented.

Mr. *Henderson* said: He did not wish to be considered as opposed to the exemption of a sufficient amount of property to supply the necessary wants of any citizen; but he was opposed to protecting a large amount of property in their hands. He must therefore vote *no*.

Mr. *Howard* said: He was opposed to one feature of the section, that which forbids the alienation of property without the consent of the wife. But as he believed the section would operate as a check upon the credit system, which he looked upon as one of the great evils of the times, he would vote for it.

Mr. *Van Zandt* said: He should like to vote for it; and had not thought it could be so amended that he would not vote for it. But he did not like that portion of the section which gives the wife the control of the property, and should vote *no*.

The ayes and noes being called, stood as follows:

Ayes—Messrs President, Anderson, Armstrong of J, Armstrong of R., Bigby, Baylor, Brashear, Bache, Burroughs, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Hemphill, Hogg, Horton, Howard, Holland, Hunter, Jewett, Kinney, Latimer of L., Latimer of R.R., Lewis Lumpkin, Lusk, Lipscomb, M'Gowan, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standefer, Tarrant, Ochiltree, and Young—42.

Noes—Messrs Caldwell, Cunningham, Forbes, Gage, Henderson, Hicks, Irion, Jones, Love, McNeill, Scott, Smyth, Van Zandt and White—14.

So the section was adopted as amended.

After various motions to adjourn,

Mr. Cazneau moved to strike out the 24th section. He said the title would have to be, in many cases, as long as the law itself, if this section were adopted.

The motion was lost, and the 23d, 24th, 25th and 26th sections were adopted.

On motion of Mr. Irion, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Wednesday, Aug. 6th, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Roll called—quorum present—prayer by the Chaplain—journal of the preceding day read and adopted.

Mr. Jones moved to strike out of the journal of yesterday all that part in relation to the resolution fixing the time of the meeting and the adjournment of this body.

Motion lost.

On motion of Mr. Evans, Mr. Jewett was added to the special committee appointed on yesterday, to enquire into the amount of land claims issued by this Government, &c., &c.

On motion of Mr. Davis, the Convention took up the

ORDERS OF THE DAY.

The report of the committee on General Provisions being first in order,

Mr. *Lipscomb* moved to amend the 27th section, by striking out the words "on which taxes may be levied"; also occupation." In support of the motion he spoke as follows.

I hold it, Mr. President, to be a sound rule, that taxation should be considered as imposed in proportion to protection. The object of taxation is to support the protection given to property; and one species of property should be as much protected as another, whether vested in land, goods, negroes, cattle, sheep, or manufactures; and the only fair and equal tax is one in proportion to the property so protected. I have an objection to the section as reported by the committee Will it not in effect leave it to the Legislature to drop from the tax list such property as they may think proper, only guarantying equal taxation upon such property as they may think proper to tax? There would be no collision in the Legislature, if there should be an identity of interest throughout the whole State But this evidently cannot exist. One species of interest will be fostered in one part of the country, and another in another, according to climate, soil, and other circumstances And if it is left to the Legislature to drop any species of property which they may see fit, it will give rise to jealousies and difficulties. If the tariff in the

United States had been laid for revenue alone, if it had been an *ad valorem* duty, we should never have heard to this day of the tariff question shaking the Constitution of the United States. I believe we shall be in a similar situation; and that it would be wise to adopt this provision and avoid these evils. To the concluding part of the section I object, for this reason. I do not believe that the planter, after he has paid a tax for his property, should be taxed for the occupation he pursues. The planter's is an occupation as much as any thing else. There is no justice in it, no necessity for it, and I wish to see it stricken out. Again, the mechanic is subject to be taxed. I am unwilling that the mechanic should be taxed; I wish to hold out some encouragement to that class in the community. I believe they have contributed more largely to general improvement than any other class in the world. If it is the wish of the Convention, I am willing that lawyers and doctors, the two learned professions, should be taxed. If I thought otherwise, belonging as I do, to one of these professions, I would not ask the Convention to strike out the portion which relates to it.

On motion of Mr. Cunningham, the question was divided.

Mr. *Evans* said: I understand that if the amendment prevails, a tax must be levied upon every item of property, that no species will be exempt; even the widow's poultry must be enumerated. It will certainly compel the officers of government to seek out every item, no matter how poor the individual may be, or how annoying the investigation. If that is to be the effect, I am decidedly opposed to it.

Mr. *Lipscomb* said: I do not see the difficulties which the gentleman from Fannin imagines. I do not think that every species of property will have to be enumerated, down to chickens and the like. But the taxpayer, perhaps, will be called upon to say what he is worth, and the tax will be levied in proportion. I see no harm in this; even in poultry, I have known some to have a large amount of capital employed; fortunes have been made by it, as humble as it may seem to be to descend to poultry.

Mr. *Forbes* said: I presume this clause cannot be construed in any event as extending to farmers. I understand it as intended to extend to mechanics and merchants, or persons of any trade or calling. The arguments urged by the gentleman. however, are still applicable. If the farmer has five thousand dollars invested in land, he should pay an *ad valorem* duty. If the mechanic vests that amount in his particular calling, or the merchant in goods, there is certainly no reason in justice why the latter should contribute more than the farmer. All occupations are alike open to all persons. It is the very essence of free government that taxation should be uniform and equal. I think this is a discrimination which cannot be sustained. If the amendment of the gentleman could be withdrawn, I should like to see a provision inserted, which I will present to the consideration of the Convention.

Mr Lipscomb withdrew his proposed amendment to the latter part of the section, and offered the following as an addition to the 27th section:

"Provided that the word 'occupation' shall not be construed to embrace the right to pursue farming, or the exercise of any mechanical trade."

Amendment adopted.

Mr. Love offered the following, to come in at the end of the 27th section, after the amendment of Mr. Lipscomb:

"In assessing lands for taxation, the valuation shall be without reference to any improvement made."

Mr. *Love* said. One single word in relation to the amendment. It has always seemed to me unjust to tax a man at a higher rate, who has improved his land, and thus developed the wealth of the country. In my opinion, he that cultivates and improves his land, does a service to the community, and his land should be taxed without reference to the increased value put on it by his own industry. I think it the just system, that all lands should be taxed according to their unimproved value.

Mr. *Henderson* said: If the amendment prevail, it will operate exclusively for the benefit of the rich, and those who live in fine houses. I cannot see any sufficient reason why gentlemen who are able to build splendid mansions, should not pay taxes for the value of that improvement, as well as for any other species of property they may have. If they choose to invest their profits in this manner, instead of laying them out in negroes and other lands, why should they not pay the same?

Mr. *Love* said: You may put it in the amendment, that brick houses shall be taxed. It is the log cabins that I want to exempt.

Mr. *Van Zandt* said: This question should be decided without reference to brick houses or log cabins. The individual who has five thousand dollars worth of property to be protected, should pay five times, as much as the man who has only one thousand.

Mr. *Henderson* said. I think that those who have small farms will not be obliged to the gentleman from Galveston for this exemption. I am satisfied that the people would prefer to have the whole amount taxed rather than by that means to exclude the additional value which by their improvements has been put upon their plantations.

Mr *Runnels* said: I am opposed to the whole system of *ad valorem* taxes in this country; because I believe it inapplicable in itself, and impracticable in its consequences I am very well aware that there is no system of taxation better than that which reaches the ability of individuals to pay. The fortunes which have been acquired, and the means and sources of revenue by which fortunes are acquired, are certainly the just objects of taxation But this system of *ad valorem* taxation, when applied to the people of this or any other planting community, savors a little too much in my opinion of the odious excise laws formerly in vogue, under which every pane of glass in an individual's house was enumerated, had a value placed upon it and was taxed. This principle seems to extend to every article of property, whether of mere convenience or comfort, or a source of revenue. With regard to the suggestion of the gentleman from Harrison, the house of a planter in the country should be taxed in the same proportion with that of a merchant in a city or town I differ from him entirely. When the planter builds a house, it consumes his fortune; it is not for acquisition; while the individual who builds in a city or town, may invest all his capital in that way to rent. In the country, a man derives no revenue from it whatever, but on the contrary is consuming the means which he might otherwise appropriate in making a revenue. If, Mr. President, you adopt the doctrine laid down in the section under consideration, you adopt a system by which the trunk, chair, stove, table, knife and fork of every individual in the community must be estimated. I tell you it will be an odious system to the people of this country. I have some acquaintance with the nature of these things. I have not lived fifty years without learning something of the disposition of the people. This rigid scrutiny into every little trifling article, will be odious; there is no justice in it. It will be as easy for the Legislature to designate the species of property fit and proper to be taxed, as for this Constitution to do so. I think it dangerous for us to lay down a principle with regard to revenue which cannot be changed or altered It seems to me it should be left to the Legislature and the people. This subject has not been canvassed before the people; and we are not prepared to say what system of taxation will be most approved by them. My own opinion is, that the fortune already acquired, and the means of acquiring that fortune, are the most legitimate source of revenue. I have not reflected much upon this provision, but I have thrown out these remarks as expressing my general views upon the subject.

Mr *Lipscomb* said: I am not in the condition of the gentleman from Brazoria. This is a subject upon which I have read much, and reflected deeply; and if I am in error, I am without excuse. I am opposed to the amendment. What is taxation? All the writers concur in saying, it is the price of protection. It should be then, in proportion to the benefit we derive from it. Is protection as valuable to the man who has his three legged stools in his cabin, as to him who has a fine house, with his ottomans and other costly furniture? The public enemy may come and destroy these improvements. It is repugnant to a rule universally agreed on by all writers on political economy. There is no other rule to which we can resort, which is uniform and equal.

Mr. *Runnels* said: I did not mean to say that I had not thought much upon the subject of raising the revenue. I have thought a good deal read something with regard to it, and from my reading and experience, I have arrived at the conclusion which I have stated, in relation to the applicability of this system to the peculiar condition and circumstances of the people of this country. I have no fine house, and I never expect to have. But I tell you, there is not a man in this, or any other planting country, who will not object and protest against being compelled to give an inventory of every article he may possess; it may be on the ground that it exposes his property, and places before the country his means and ability in a manner perhaps not agreeable to him. It is descending *into little matters, in my opinion not legitimate objects of taxation.* I think we ought not here to fix a system upon the people which would be odious to them. I think we had better leave it to the Legislature to ascertain the amount of revenue necessary to be raised, and the objects upon which the feelings and interests of the people at large indicate that a tax should be imposed.

Mr. *Evans* said: I do not rise, Mr. President, to make an argument upon this question, but to state the principles which will govern my vote, and briefly to notice the positions taken by the honorable gentleman from Washington. Like my friend from Brazoria, though I have thought much on the subject, yet my attention of late has not been directed to its investigation; and the subject of taxation is one which cannot well be discussed but after mature preparation. The opinions I extertain upon this question are of long standing. I dislike the section as reported, and the amendment of the gentleman from Washington, makes it absolutely odious. Still, I felt a great reluctance to bringing my opinions before the Convention, imagining that I might be greatly in the minority, and not knowing that a single deputy on this floor agreed with me, I was truly gratified and proud to find a gentleman of so much ability and experience as my friend from Brazoria (Mr. Runnels) advocating the opinions which I entertain upon the subject.

The gentleman from Washington goes so far as to say that every political writer contends for the principle that *taxation is the price of protection.* Now is this correct? Do all the writers so teach? And has the learned gentleman read all the writers upon this question? I have read several of these writers, and am familiar with the theories of some of them who discard this dogma. I might challenge the gentleman to a comparison of authors; I may affirm that the ablest and most liberal writers of the present day do not place taxation upon this principle. The theory of the most enlightened writers of the present day is to tax *profits, privileges*, and *luxuries*. The principle contained in the section is that of absolute despotism, grinding despotism. I cannot imagine a more odious system than this. It brings the government down with a grinding weight upon the people. It exposes the closet and the chamber of the poor man to the espionage of the tax gatherer. It operates unequally and harshly upon the poorer classes in the community. It causes them to pay a double tax. The merchant having been taxed, lays it on his goods, and the consumer pays it; and then the direct *ad valorem* tax makes it double. Taxes should be laid on incomes and luxuries, and not upon labor. If the *ad valorem* system is adopted, the collector will be as hateful to the poor in this republican government, as is the exciseman in the monarchies of Europe.

Mr. *Davis* offered the following amendment to the 27th section: "Provided the Legislature shall have power to exempt from taxation a certain amount of property which shall not exceed two hundred dollars to each family;" and addressed the Convention as follows.

I am satisfied that some gentlemen have had fears that a portion of the people of this country, and perhaps the portion having the majority in point of representation, would probably be without slaves, and that they might take it into their heads to impose the largest amount of taxes upon slaves; and I know that for the purpose of preventing that, some of them have thought it necessary to make a black basis of representation. Now if we lay an *ad valorem* tax, these fears are done away. I vote for the *ad valorem* tax, for the purpose of placing this species of property beyond the reach of those who may be supposed to be opposed to it. Independently of all the books which the gentleman from Fannin has ever read, I have come to my own conclusion that the *ad valorem* tax is the only equitable tax ever laid upon the people. I do consider that taxation and protection should go hand in hand; and that he who derives protection from the laws of the country, should pay in proportion to the value of his property. As it has been remarked that the old ladies may grumble about paying a tax upon their wheels and looms, I would propose that an amount of property sufficient to include the household furniture shall be exempt from taxation.

Mr. *Howard* said: By way of substitute, I will move to strike out all after the word "State". I think the details of taxation should be left to the Legislature, and I am opposed to this Convention establishing a rule of taxation which must govern property as long as this Constitution shall stand. We know that at present, the amount of property in the country is very small in proportion to what it will become in progress of time, I think it but fair that subsequent property holders should have a voice in the regulation of this matter.

Mr. *Hogg* said: I shall take pleasure in voting against all the amendments, reserving the right of voting for the intended motion of the gentleman from Bexar, to strike out all after the word "State".

Mr. Davis' amendment was rejected.

Mr. *Van Zandt* said: Before the question is put upon the amendment offered by the gentleman from Bexar, I rise for the purpose of requesting some gentleman who voted with the majority upon the first amendment offered by the gentleman from Washington, to move a re-consideration. I believe it was acted upon hastily, and without consideration. I believe that a slight amendment would make the bill as perfect as possible. Though I am opposed to descending into particulars, yet I believe that the citizens of this country desire a basis of action to be fixed, and that the Convention should determine whether all taxes should be levied *ad valorem* or not. I believe it necessary to fix in this Constitution a principle which shall determine the basis upon which all taxes are to be levied. I do not know that we have reason to apprehend any immediate danger with regard to this subject. But the time may come when a particular interest in this country may predominate; and as all men, when they have power, abuse it. I believe a principle should be established in the organic law, to be immutable and unchangeable. In regard to the amendment made a the suggestion of the gentleman from Washington, I believe it should not have been made I believe that the policy of this country will require that certain species of property shall be exempt, and that certain others shall not be inquired into for the purpose of taxing them. If the section as amended is passed, what will be its effect? It will require all churches, all hospitals and schools, all school books, and every thing of that character to be taxed. It will reqiure even the Bible upon your shelf to be taxed It descends to the wardrobe of your wife, subjects her paraphernalia to examination, enumerates the rings upon her fingers, and values every other species of dress which she may have: it is necessary to mention them in detail: I presume it is the intention of no gentleman here to require these things to be taxed. I for one am unwilling that a species of inquisition like this should be established in our Constitution; for it is nothing more nor less that an inquisition. We may in all probability, desire to make some internal improvements, to construct some rail roads. It may be the policy of the country to exempt them from taxation until they get into operation; and they are not the growth of a month or a year. If it should be the disposition of the Legislature to extend them this privilege for a time, and until they are able to produce revenue, this law will cripple and shackle them. It may become necessary to open some of our rivers: it may seem to the Legislature good policy to free from taxation a certain class of vessels navigating these streams with danger, hazard and difficulty, until these obstacles can be removed. I believe that we should leave the hands of the Legislature to some extent unshackled with regard to taxation. But at the same time, whilst leaving details to the Legislature, that it would not be improper here to establish a general principle which shall govern the subject. If the section as amended is retained, it will prevent the Legislature from freeing many things from taxation which policy would require to be exempted. The gentleman from Brazoria is mistaken as to the tax upon window glass levied in former times; the objection of the people was to a specific, and not to an *ad valorem* tax. It is impossible to adopt any system which will do entire justice to all; but this approaches nearest. I shall vote against the amendment of the gentleman from Bexar. I agree with him that we should not tie up the hands of the Legislature; but we should establish a general principle.

The question was put, upon the amendment offered by Mr. Davis, which was rejected.

Mr. Jewett, at the suggestion of Mr. Van Zandt, moved a re-consideration of the vote adopting the amendment of Mr. Lipscomb, to the 27th section.

Mr. *Caldwell* said: I shall vote, under my present impressions, against the re consideration. It appears to be the object of all government to protect the weak against the strong, and to protect the minority in some degree against the majority. I see nothing in the whole Constitution so well adapted to effect these objects, as this provision as it now stands. If altered, as desired, according to my notion of the matter, it will certainly give the majority the power of taxing one species of property, and collecting the whole revenue from that species of property, when its holders may happen to be in the minority, and of exempting the majority from all taxation, although they may be receiving the largest proportion of protection. With these views, I shall vote against the re-consideration, and in favor of the section as it now stands.

Mr. *Runnels* said: I shall vote for the re-consideration, because I very much prefer the original section. This leaves it to the Legislature to designate the description of property which shall be taxed; it provides that taxation shall be uniform, and leaves it to the Legislature to lay a tax upon the various objects most appropriate for taxation, equality in every section of the country. I am willing to trust my interests to the Legislature of the State. I am not apprehensive that the interests of [illegible], at least for a number of years, can be so diversified as to effect [illegible] great degree. I am opposed as I remarked before, to [illegible] system; it is inapplicable to this country in its present [illegible] in itself, and impracticable to be carried out. Gen[illegible] enacting a system which is to be entailed upon the coun[illegible] upon it, and look well to its consequences. I would ask any of the gentlemen who have proposed this system, to point out to me by what means we are to arrive at justice under it. How are we to obtain the value of the property in the various sections of the country? By what means can that value be equitably ascertained? [illegible] be officers appointed for the purpose of valuing this property [illegible] tell you, sir, that such a system, in its details, will impose an [illegible] expense upon the community. We have seen that governments [illegible] countries similarly situated to this, adopt the system of taxation by specific valuation. It seems to me that the Legislature, being composed of persons representing every section of the country, can best estimate the value of property, and adopt the method which will operate most generally and equitably.

Mr. *Moore* said: I trust the re-consideration will prevail. The section as reported, is copied from the Constitution of Louisiana; and we have reason to believe that the gentlemen who formed that Constitution, discussed this matter fully, and I believe that Convention embodied an equal amount of talent and learning with this. I am surprised to hear this system spoken of in connection with arbitrary power, and to hear it stated that the true system is to tax luxuries Gentlemen are in error. That system of taxing luxuries was established by despots. The system here proposed is the simplest, the most beneficial to the people, the most easily applied, and the one that the people understand most readily. If this system is adopted, the assessor goes to the door of each individual, and inquires of him what is the value of his property; the individual, under oath, gives him the amount; he sets it down in the tax list, and goes away. And he goes throughout the county in a few days, and collects the whole amount. He does not go into the man's house, and examine every article, and take down his stools, furniture, &c. That is all a humbug It is not to be expected that any such measures will be adopted by our Legislature. How is it, that this proposition is constantly brought up, as if members were afraid that the Legislature hereafter will have no sense or discretion? The intelligence of the people of Texas has been displayed in Congress heretofore. Let us then be willing to leave them some discretionary power

Mr *Forbes* said: I wish to state briefly one or two reasons against the motion. First, I think the abstract principle laid down in the section, is the only correct one which can be adopted; that all property which receives protection should contribute to the payment of the burthens of government Again, it is clear and indisputable, that if you take away from the general assessment any proportion of property, you thereby increase the per cent. to be raised. How would this operate? I think it would clearly operate towards increasing the burthen of the poorer class in the community. If you exempt property to be invested in ornament and splendid houses, of course you take so much from the aggregate amount, and make it necessary for the Legislature to increase the per cent. This is clear and incontrovertible. I think it just and proper that all property should pay a tax, and that a uniform and equal one. I think also that it is the duty of the Convention to take away the power of discriminating. If you give the Legislature the power to say that this or that species of property shall be exempt from taxation, they may continue to exercise it, until the whole burthen shall be laid upon a particular class of property. I think it all important that the Legislature shall not have the exercise of this power. With regard to the difficulties of carrying out this system, I think it merely imaginary. There will be no more difficulty in carrying it out in practice, than in carrying out the one now in operation. It is competent for the Legislature to direct, that a man shall say upon oath that he is worth so much; and he then pays one-half, or one quarter, or one per cent, as the Legislature may direct. It is simple, practicable, plain and just.

Mr. *Scott* said: I will briefly give the reasons why I shall vote against the re-consideration. As the section now stands amended, and will stand if the re consideration does not prevail, all property will be taxed according to its value, and that value to be ascertained according to law. If it is reinstated as reported, any specific property may be taxed exclusively of others. I think the principle is a true one as laid down, that taxation is the price of protection, and that all property should be taken into consideration. I think that is incontrovertible, notwithstanding the general reading of the gentleman from Fannin I know little about political economy: but I am satisfied that the principle is correct and irrefutable. We have heard a good deal about manufacturing establishments, about a Lowell, and abolitionists in Texas.— We will suppose that these things are not imaginary, but may really happen hereafter. Then is not this the greatest protection which the slave-holder can have? All he wants is, that his property shall not be taxed disproportionately. It is all I want as a slave holder; you may fix your representation as you please. This plan is adopted in Tennessee. The justices of the peace give notice to the people to come and give in their lists at a particular time. If they do not give them in, as a matter of course they are doubly taxed. The Legislature, if this plan is adopted, can prescribe that fraud in such cases shall amount to perjury. These things are not required to be done in the Constitution. I think the impractibility of this method is in the imaginations of gentlemen. What is the method here now? People go and give their property in to the assessor. Does he qualify them? I do not recollect that I have ever been qualified in my life The assessor takes the statement upon a man's honor. I hope the re consideration will not take place.

Mr *Runnels* remarked. It must be recollected that Tennessee is an old and well regulated community. Property has there acquired a fixed value; and I presume they have some mode of valuing property, without leaving it to the individual himself to say what he is worth: for in doing that, they would leave it to a man's own honor and conscience to say what tax he shall pay. This system was adopted in Mississippi; and I have known individuals living in the same neighborhood, and possessing plantations equal in value, to make a difference of ten or twenty dollars per acre. It was found so inconvenient there, that the State abandoned it. Now in this country what fixed value has property, consisting as it does, of negroes land, stock and merchandize? One species of property is more active, and will be more in demand than another. In consequence, there is a surplus of land in this country; it will necessarily be reduced in value and changeable. Negro property is the most sought for, and the the most active and will be rated higher than landed property. Thus the system will not work equitably. In a country where property has a fixed value, I admit that it might operate well, and perhaps the most just system which could be adopted.

Mr. *Ochiltree* said: I am glad to see a question of so much importance as the one now before the House, elicit so much attention and so much talent. I am proud to see that a subject calculated to exert so powerful an influence upon the best interests of the State at large, has received so much study on the part of the members of this body It is a prominent question, and one to which we should pay very great attention; one upon which we should be careful not to adopt any hasty conclusions, but look well to the premises we are about to assume, and discuss dispassionately all the advantages and disadvantages connected with any particular system of taxation we may think of adopting. It is a sound position, and one, I believe, laid down by all the political encconomists, though like my friend from Montgomery, I may say that I have never read a book upon that subject in my life, that taxation is the price of protection. This is true, sir, taxation is the price of protection. It should therefore be uniform in its character. While I have never read any work upon political economy, I have of course thought a great deal on this particular subject, and I have always been led to the conclusion that any other system of taxation than the one founded upon the value of the property taxed, is unjust and anti republican in its character— When a citizen possesses property, the amount of his protection is as the amount of the property he owns. He should therefore be compelled to contribute *pro rata* to the chest of the nation. And there should be no discrimination. A man has the right to employ his capital as he pleases, provided he does not injure his fellow men And whenever an individual may think proper to indulge any whim or caprice, he should be allowed to do so to the top of his bent. I have never seen the justice of any law imposing a particular tax upon any whim, the indulgence of which does not interefere with the rights of a man's neighbors I am therefore in favor of the uniform system. It is entirely republican in its character, and enables a man to lay out his money as he thinks best. It does seem to me that there have been a great many imaginary troubles thrown round the collection of taxes upon this principle. We are, to a certain extent, under any system, compelled to appoint assessors and collectors, and we must in a great measure, depend upon the honor and faith of the individuals who give in their property There is no system to which we can resort, which will not, to a certain extent, create the system of espionage so eloquently described by the gentleman from Fannin. While I do not suppose it is intended to examine a ladys's chamber, or value a mans old clothing, I would say that the assessor may go the house of the citizen and call upon him to give in the aggregate amount of his property, and I would rely with confidence upon the patriotism of the people not to attempt to avoid putting in the full amount of the property which they may have. Sir, in this country, the price of property will make the citizen, under all circumstancss, extremely anxious to place himself as high in the scale of property as his neighbor, We shall not find any great difficulty in placing a uniform rate upon land, as the Legislature will have the power to classify the lands of the country. We are, and will be for years to come, a land selling people; and if we adopt a system of classification, we shall very seldom find an individual attempting to throw his land into the third rate class: he will not put his land upon the tax book as inferior to that of his neighbor.

I am in hopes the motion to re consider will not prevail. I see nothing objectionable in the section as it now stands.

The question being upon the re-consideration,

The ayes and noes were called, and stood as follows:

Ayes—Messrs. Bagby, Bache, Brashear, Clark, Evans, Hogg, Jewett, Moore, Runnels, Smyth and Van Zandt—12.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Brown, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Horton, Howard, Hunter, Irion, Jones, Latimer of L. Latimer of R. R, Lewis, Lumpkin, Lusk, Lipscomb. McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Scott, Standifer, Tarrant, Ochiltree, White and Young—42.

So the motion was lost.

Mr. *Love* said: I dislike to trouble the House with my opinions upon the question. I myself intend to vote for striking out all that part of the section ofter the first clause, declaring that taxation shall be equal and uniform throughout the State. I do not doubt that we are as wise as any body which within a few years from this time will be assembled together, we may be wiser, and doubtless are so in our own estimation.

Still, I am of opinion, that when we assert the general principle in the Constitution, and guarantee to all equal rights and privileges. The details should be left to the Legislature. In objecting to the residue of the clause I do not deny the validity of the principle; the *ad valorem* system is perhaps the best mode of taxation; but I object to it, because I believe it would be unequal and unjust in its operation in this country. Suppose a man establishes a manufactory, and expends upon it 100,000 dollars. His establishment is taxed: this is all right, you say. He manufactures 100,000 dollars worth of goods, and you tax them; whatever income and profits he may realize from his industry, you tax them. Again, if the assessor takes the word of every individual for the amount and value of his property, you are nevertheless compelled to provide by law against the commission of frauds in the valuation Now, the honest will always rate their property at its value; the dishonest, never. There may be thousands of things in and about a house, which the assessor himself knows to be there, upon which an arbitrary valuation may be fixed. However ridiculous it may appear, it still gives an ill-natured assessor the power to harrass; he might compel a little ragged urchin to drive up his chickens to be counted, or a female to exhibit her pantalettes, bustles and laces. I do not pretend to say that such things will be done. I say that they may be done, and unless human nature changes, it is likely they will be done, to gratify the spite of some malicious assessor. It is not to these minor matters I object, but to the principle of an inquisition of this kind, which compels a man to exhibit upon oath all that he possesses in every species of property. It is an imposition, which will be resisted; it can only serve to bring the laws into contempt, or produce dissatisfaction or dissention in the community. When you have said that taxation shall be equal and uniform throughout the State, what more do you want?

I disagree with some of my friends with regard to the taxation of the poor. I have had to live, myself, in all classes of society; and I believe the poor man pays his taxes more cheerfully than the rich. I consider it a valuable privilege to the poor to be taxed. I consider it (I will not use the word democracy) anti-republican, to exempt the property of the poor man from taxation; because he naturally says, if you take from me the right to support the government, you take from me the right to participate in that government I speak from knowledge, I sprang from the class to which I allude; I have lived with them and know their feelings well. But send the tax question to one of these men, require him to unlock his chest, value the wardrobe of his family, make him bring up his chickens, geese and ducks; and I tell you he would rebel, even to the shedding of blood.

Mr. Van Zandt moved to insert in the 3d line, after the word "law," the following:

"Provided the Legislature shall have power to exempt from taxation the buildings and appurtenances of religious, literary and charitable institutions."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of R., Bagby, Baylor, Bache, Brown, Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Forbes, Gage, Henderson, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Kinney, Latimer of R. R., Lewis, Love, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Tarrant, Ochiltree, Van Zandt and Young—45.

Noes—Messrs. Anderson, Armstrong of J., Cunningham, Hicks, Lumpkin, Standefer and White—7.

So the amendment was adopted.

Mr. Howard moved to strike out all after the word "State," in the 1st line, 27th section.

Mr. *Moore* said: By the clause, as it now stands, I fear we may prevent internal improvements. The property of a canal, railroad, or turnpike, may be taxed, and thus the construction of these works may be prevented. It is a question whether we might not tax the very forts and barracks ceded to the United States. The section reads that all property in the State shall be taxed. It is important that the tools and implements of mechanics, while excavating a canal, or engaged in a similar work should be exempted from taxation. Take, for instance, the removal of the raft at the mouth of the Colorano. The very fact of this tax being levied might prevent people from going on with the work. A great many cases of this kind may arise, which we cannot call to mind now. I shall feel it my duty to vote for the amendment of the gentleman from Bexar.

Mr. *Howard* said: I wish to say only one word in relation to the practical operation of this section. It is a principle which I think will not be contested, that those who own the property to be taxed, when taxes are laid, should have some voice in the matter. It strikes me that fixing at this day a principle in the fundamental law of the State, imposing a burden upon all tax payers from this time out, so long as this Constitution shall last, is a manifest violation of the principles of right. It is controlling the Legislature to an extent which is not only unjust, but in its practical operation will be found extremely inconvenient. And the section as it now stands, will not only operate unjustly as a rule of taxation, but the system will be found very unproductive as a means of collecting the revenues of the country. What is it? That all property shall be taxed in proportion to its value, to be ascertained as directed by law; and that no one species of property shall be taxed higher than another species of equal value. These two clauses amount to this: that every species of property, in relation to its value, shall pay precisely the same taxation I undertake to say that you cannot find any civilized government which has adopted this rule. And further, that it is totally impracticable; that you cannot reduce it to practice, and raise any revenue under it. Is it just that the man who buys his bread at the baker's, should pay precisely as much as the man who sits down to a sumptuous breakfast, and drinks two or three bottles of champagne? It is not only unjust but impracticable. I should like to see a set of men start out upon this method, and get any amount of revenue. Does this Convention intend to say, that a billiard table should pay no higher tax than so much meat, and that brandy should pay no more than the absolute necessaries of life? It strikes me we are setting out with a rule of taxation which we cannot enforce, even if we establish the abstract right. It is said that property ought to pay in proportion to protection. To some extent it is perhaps true; but it cannot be absolutely true. Because the protection of life is more valuable than that of property; and yet we cannot establish any scheme for taxing a man in proportion to his life. The true rule is to place the taxes upon the portion of the community where the burthen may be borne with the least inconvenience. This plan will be found to be not only unjust, but an absolute nullity. You cannot raise any revenue upon it, if adopted; but the government will be bankrupt in three years.

Mr. Van Zandt moved as a substitute to Mr. Howard's motion, to strike out all the section, except the last clause; which was accepted by Mr. Howard.

The ayes and noes were called for on the adoption of the amendment, and are as follows:

Ayes—Messrs. Anderson, Armstrong of R., Bagby, Bache, Clark, Evans, Hogg, Howard, Kinney, Love, M'Neill, Moore, Runnels, Smyth, Standefer, Tarrant, Van Zandt, White and Young—19.

Noes—Messrs. President, Armstrong of J., Baylor, Brashear, Brown, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Horton Hunter, Irion, Jewett, Jones, Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, M'Gowan Miller, Navarro, Parker, Power, Rains, Scott and Ochiltree—35.

So the motion was lost.

Mr. Van Zandt moved to adjourn until 4 o'clock. Lost.

Mr. Armstrong moved to adjourn until 3 o'clock, P. M. Lost.

Mr. Forbes offered the following amendment, as an addition to the 27th section:

"And further provided, that such income or license tax shall not exceed in amount what would be a uniform *ad valorem* tax upon the sum taxed as income, or stock vested in such occupation, trade, or profession; but this restriction shall not extend to any calling, occupation, or business, the prohibiting or restricting of which shall be deemed necessary for the public good and morals."

Which was rejected.

Mr. Smyth offered the following as a substitute for the 27th section:

"Taxation shall be equal and uniform throughout the State, all property shall be taxed in proportion to its value, to be ascertained in such manner as the Legislature shall by law direct. The Legislature shall have power to lay an income tax and license tax upon such pursuits and occupations as they may think proper. The Legislature shall also have power to exempt from taxation, a part of all the property belonging to churches, universities, colleges, schools, and other public institutions as may be of public utility, also an amount of property belonging to every family not exceeding   in value."

On motion of Mr. Caldwell, the Convention adjourned until 4 o'clock, P. M.

The ayes and noes being called on adjournment, stood as follows:

Ayes—Messrs. President, Armstrong of R., Baylor, Bache, Brashear, Caldwell, Cazneau, Clark, Darnell, Evans, Hogg, Horton, Hunter, Irion, Jewett, Jones, Kinney, Lewis, Love, Lusk, Lipscomb, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer Tarrant, Van Zandt and White—33.

Noes—Messrs. Anderson, Armstrong of J., Bagby, Brown, Burroughs, Cunningham, Cuney, Davis, Everts, Forbes, Gage, Henderson, Hicks, Howard, Latimer of R. R., Lumpkin, M'Gowan, M'Neill, Ochiltree, and Young—20.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Mr. Van Zandt offered the following as a substitute for Mr. Smyth's substitute:

Strike out all after the word "State," in 1st line to the word "the" in 4th line, and insert "all property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except such property as two-thirds of the Legislature may think proper to exempt from taxation."

Mr. *Van Zandt* said: I believe it will meet all the objections which have been urged to the several amendments offered; and will prevent our presenting ourselves here in a ridiculous attitude. This amendment will guard fully against the state of things supposed by some gentlemen, which might induce the imposition of a disproportionate tax on slave property. It provides that no amendment of this tendency shall be made except by a vote of two-thirds.

Mr. *Jones* said: I have listened with attention to all the arguments adduced in relation to the various amendments; and I can discover none of the difficulties imagined by the gentlemen who have addressed the Convention. I can see nothing in the provisions of the section to compel the Legislature to make it the duty of the tax-gatherer to go in and examine the wardrobe of a lady, including her bustles, pantalettes and rings. Neither do I see anything to prevent the Legislature from passing laws which will affect the collection of taxes with as much ease and as little expense as the present system. I fear that the amendment now proposed is a *ruse* to pack the section. I cannot discover how it would place the section in a better condition than it is. I shall vote against that and all others.

Mr. *Evarts* said: I am in favor of the *ad valorem* system of taxation above all others that I have examined or lived under. I look upon taxation as a matter of necessity. It is a duty that all men owe to their country to yield it support when called upon. I believe that in the history of legislation in the States of the American Union, no one question has been mooted which has caused so much perplexity and difficulty as this of the proper system of taxation; and almost every mode or system which the ingenuity of man could invent, has been at various periods in force and practice in those States. I believe, however, that at the present time, the system generally approved, that which works best, and which experience has shown to be the most equal and just, is the *ad valorem* system. I have lived some ten or twelve years in a State where this system was in practice, and where there were but few articles exempted from taxation. And, sir, other modes have been tried in that State, and have been found to work badly. This, in the State of Indiana, is found to be the least troublesome and expensive which could possibly be adopted. It is objected by many that we shall experience difficulty in arriving at a proper and correct system of valuation. It strikes me that it will not be difficult. Property is divided under this system, into two classes, real and personal. A commissioner is appointed to value all the land in a county, and this valuation is permanent, standing for five years. He is sworn to discharge his duty faithfully, and goes round over the county and assesses the lands, together with improvements. If individuals have fine fences and splendid buildings, their property is valued in proportion. This valuation of real property is not expensive, occurring only once in five years. If a piece of property is transferred from A. to B., the law makes it the duty of the lawyer to register his name upon the roll of rateable polls of the county; so that there is no difficulty in ascertaining who should pay. Then if personal property is taxed, even to the wardrobe of the wife, it is given in in the aggregate. I do not see any difficulty here, and for the soul of me I cannot tell any reason why one species of property should be exempt and not another, why the silks and paraphernalia of the wife should be exempt more than any other species of property. It is no more sacred, that I know of. But when called upon to give in your personal property. you give in a statement of what you suppose yourself to be worth. If a man gives in a fraudulent list, as a general rule, it is pretty easy to be detected· There is no man taxed in your neighborhood, but you can tell whether he has committed a violent fraud. If a man has five thousand head of cattle, he might miss a cow and calf, but it would be easy at any rate to give in something like the amount. As to exemptions: I am opposed to exemptions from taxation, unless in cases of some great necessity. It is true, it would be unnecessary for the State to tax her own property, if the State of Texas should undertake to cut a canal or build a railroad. But if individuals undertake such a work, why not tax them upon the amount of stock actually paid in? I care not in what manner I may see proper to use my money, I think my government has just as much right to call upon me for my quota of taxes. I would, however, be in favor of exempting one class, that embracing school houses, meeting houses, and grave yards, and all those things which are eleemosynary in their character, or for educational purposes. I would be willing to go that far, but no farther. And I think if there is any subject upon which the hands of the Legislature should be tied up, it is this very system of taxation. Much has been said upon this floor upon the subject of protection. When the subject of the basis of representation was before the committee, some honorable gentleman wished to have the federal basis adopted Why? For the purpose of giving protection to the peculiar institutions of the South. In reply to these gentlemen, I said, we will give you the *ad valorem* system of taxation, and your negroes will then be protected. It does seem to me that this system as a whole is the only one which carries with it equal justice, and prevents the difficulties which usually attend the subject of taxation. I dislike upon this subject to leave any thing of importance open to the Legislature; the details of course will be left to that body to carry out the system.

Mr. President *Rusk* said: I think that the debate is drawing to a close, as it seems that the House have sufficiently manifested their preference for one of the two systems. The *ad valorem* system. as a general measure, seems to my mind to be at least less exceptionable than a specific tax. This question is one of a vexed character, and there never has been a system of taxation found to operate uniformly upon all persons alike. There will be exceptions; and it does seem to me that the opponents of the *ad valorem* system have been driven to strange resorts. The idea of resorting to the hen house, bustles, &c, is going to extremes. Both systems have their objections. Taxation is odious in any shape or form in which it may come. The first clause, declaring that taxation shall be equal and uniform throughout the State, would authorize the Legislature to lay a specific tax; and they might exempt lands entirely, and only tax slaves. Take the uniform principle of equal taxation upon land, it is unequal in its operation. Land has never been divided into more than three classes; and the first quality upon the Gulf may be worth twenty or thirty dollars per acre, while the same quality of land elsewhere may not perhaps be worth two dollars; and the individual whose land is worth two dollars might be called upon to contribute as much as the man whose land is worth thirty. This system is subject, I think, to greater objections than the other. I think the House is determined to establish the *ad valorem* system; and they have also manifested a strong disposition to exempt some articles of taxation. This is proper and right. If we exempt the wife's paraphernalia, the ducks and chickens, &c., we shall get so much trash out of the way, without depriving the revenue of much money; and whatever may be the case with the people of Kentucky, my word for it the people of Texas will not grumble at being exempted from taxation. I should have voted for the substitute offered by the gentleman from Jasper, but the amendment of the gentleman from Harrison will answer all purposes. This provides for a departure from the general principle, to exempt a species of property entirely from taxation; and it will be confined to such articles as the general sense of the community, justice and right require to be exempt. I shall vote for the amendment, and for another very slight one. I do not believe the Legislature would tax a man for carrying on a trade, if the power is left with them; but it would be a subject of difficulty, and if the amendment prevails, I shall move to strike out the word "trade."

Mr. *Love* said: I deny that the poor man ever complains of taxation; and I utterly repudiate every distinction which it is attempted to create between the rich and the poor, as odious and impolitic. It is contrary to the principles of good government, to the principles of freedom itself. I do not think that any thing I can say will have any effect, because members have got a system into their heads, which I know they will carry out. Yet I have a right to protest against it as unjust, inquisitorial, aud creating a distinction odious to the right of every man who does not own his thousands. I say again, that I yield to no man in this House in a knowledge of the feelings, disposition and habits of the poorer class. Because I was born in that class, and raised in that class, and their feelings, wishes and views, are still identified with me, and I know what they are. And I can tell you, give me the same advantages with any other, in any county, and place the issue upon this odious distinction, I will beat any man in the land for any office. I do not believe that the people of Texas differ from any other. I deny the right of this Convention to fasten upon us this inquisitorial power, to descend to the minutest articles. There is not a man in the world who can at any time remember all he possesses. I do not object to the *ad valorem* principle. I do not care what articles you tax, but let them be specifically named, and then put an *ad valorem* tax upon them. But I object to this inquisitorial power. I say, again, as far as I, as an individual, am concerned, I care not what system may be adopted. But still I think it the better plan to assert the principle, and leave it to future Legislatures to say what articles shall be taxed. I deny the right to fix it in this Constitution, so that no future Legislature shall have the right to alter it according to the circumstances of the time. Let the principle be immutable if you choose, but leave it to those who come after us to arrange the details, as to them may seem just and in accordance with the wants of the community.

Mr. Smyth then withdrew his amendment.

Mr. Howard offered the following amendment to the amendment of Mr. Van Zandt, to come in at the end of said amendment.

"But the Legislature shall have power to levy a specific tax upon gold and silver plate, pleasure carriages, billiard and other gaming tables, playing cards, furniture of foreign manufacture, and all malt, vinous, and spirituous liquors and distilleries."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Baylor, Burroughs, Evans, Gage, Hogg, Howard, Hunter, Jones, Kinney, Latimer of L., Latimer of R.R., Lewis, Love, Lusk, Navarro, Power and White—17.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Hemphill, Henderson, Hicks, Horton, Irion, Jewett, Lumpkin, Lipscomb, M'Gowan, Miller, McNeill, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and Van Zandt—36.

So the amendment was rejected.

Mr. Lipscomb offered the following amendment to Mr. Van Zandt's amendment:

"But no such exemption shall extend beyond the next succeeding session of the Legislature."

Mr. *Runnels* said: I shall vote against the amendment. I have not raised any objection to the principle of *ad valorem* taxation. There is no principle or system more just or equitable. But I believe it better to leave the subject with the people and their representatives I am not afraid to trust the people nor the Legislature, so far as I am concerned. The gentleman from Fannin (Mr. Evarts, referred to the position which I occupied before the committee a few days ago. What he expected or intended to establish by that I cannot conceive. I did advocate before that committee the principle of the federal basis of representation. I did it for the reason that slave property is held by a delicate tenure in all slave holding States, and more particularly so in a State situated as we are and are destined to be. I did it not upon the principle which may be assigned to it by some, that it was my desire to see property represented to the exclusion of the electoral voters of the country. I have never advocated any such doctrine. I did it, because I believed that species of property in our peculiar situation required protection. The subject has been adverted to again and again, until it has become necessary for me to explain the reasons which actuated me. I believe that every county represented in this Convention is equally interested in this matter. It has been asked, what kind of protection this would give that particular species of property? It will be recollected that the United States Government is pledged and bound to protect the States in their governments. This principle would not detract from one portion of the country, and give to another a greater weight and influence; for that species of property is common to all of us. It would give, not to one individual, but to the community in which we live, an influence which would prevent a majority from altering and changing the Constitution. Then it would operate as a salutary provision. Taxation, in any form, I consider no protection at all. If you give this species of property any protection at all, you must give it in the legislative halls of the country. For if you do not, that property can be reached by a change in your Constitution. If you give it in representation you do protect it, and essentially. If a change in the form of government should be attempted, with a view to abolish the system entirely, it must be done in conformity with the mode laid down by the Constitution of your State. And if a bare majority should resort to it, it would be revolutionary; it would not be sustained; and you would be protected in your constitutional forms of government by the government of the United States. I did it as much with a view to protect the people of the county which the gentleman represents, as my own. I have not, as I repeat, advanced a solitary word against the system of *ad valorem* taxation. I believe, however, that the Legislature should have the power to designate the species of property which should be taxed, and should tax that *ad valorem*, equally upon all. I think the same species of property is held by all classes. I will draw no invidious distinctions. I think that all are free and independent, and that one class is entitled to as many privileges and advantages as another. I have been always the advocate of this doctrine, and it is dear to me. I shall vote against the amendment; because, if we are to have the *ad valorem* system, and have to incur all the difficulties and expenses attendant upon it, let us have it out and out.

Mr. Jewett said: I shall oppose the amendment, because I think it calculated to introduce periodical fluctuations in the taxation system of the country. It will open wide the door to political demagogues. And for another reason, because I would not wish to prohibit the Legislature from aiding a class of works of internal improvement, the erection of bridges, the construction of rail-roads, or the works necessary to the improvement of rivers or harbors. I am willing to trust something to the discretion of the Legislature chosen by the people.

The amendment was rejected.

The ayes and noes were called for on Mr. Van Zandt's amendment.

Mr. *Henderson* said: I am willing to vote for exempting some species of property: but am not disposed to leave it to the Legislature to exempt one man, and tax another.

Mr. *Brown* said: I am still in favor of the *ad valorem* system; but I look upon the substitute as embracing a dangerous relaxation of principle I would be willing to go so far as to exempt property to the amount of 200 or 250 dollars. But I cannot tell what might be the system, if we adopt the amendment It is the *ad valorem* system, so far as the Legislature may choose I call upon those who are in favor of the *ad valorem* system, to look to what they are doing in voting upon this amendment. It is no easy matter to get two-thirds of the Legislature.

Mr. *Lewis* said: I am in favor, as almost every gentleman seems to be, of the *ad valorem* system of taxation, I have in this House and elsewhere. advocated that principle, and am still in favor of it. But I think, that evil consequences may result from the amendment proposed by the gentleman from Harrison, unless the amendment of the gentleman from Washington had prevailed. I remember, and perhaps some other gentleman upon this floor will remember the application made to the Legislature of Alabama for a charter for a rail-road, with exemption from taxation for a certain time. The charter was obtained, with the exemption for a length of time. What were the consequences? It had a bad effect throughout the whole country. Look at the case of the Planters and Merchants' Bank of Mobile. At every session application was made to the members of the Legislature, and after a while, though it required a majority of two-thirds to pass a charter, its friends succeeded in obtaining it; and in three years the Bank was put in liquidation, bringing in its train ruin and devastation. I was very much in hopes that the amendment would have prevailed, providing that any exemption should not extend beyond the next session of the Legislature. But although in favor of the *ad valorem* system of taxation, yet I think that some things which belong to the laboring class of the community ought to be exempted from taxation. Is it fair, is it in accordance with the principles and sentiments of the members of this House, that the spinning jenny should be taxed in the same proportion with the piano? Should the demijohn of brandy in the house of the wealthy man pay at the same rate with the spinning wheel of the poor man's wife? It would be contrary to every principle of justice and equity. The one is a luxury, while the other contributes to the support of the laboring classes, and deserves the protection of the legislative department of the government Then let some of these things be exempt from taxation; and let us adopt no plan subjecting the citizens of this country to an inquisitorial process, which must be disagreeable and annoying to every one. I remember that in 1840, when the government of the United States thought proper to make an examination into the houses, poultry yards, and every thing of the kind, for the purpose of gaining statistical information, the people became alarmed, and many Whig orators availed themselves of the little circumstances to excite the feelings of the people. Exempt a small portion of the property of the laboring class, and I will go with you for taxing all other property according to its value. The principle is a correct one in relation to the direct tax; though impost duties, I think, should be based upon the discriminating principle. But it is unnecessary to advert to that system. I go now for the *ad valorem* system of taxation, so far as the direct taxes are concerned. At the same time, I would leave it with the Legislature to exempt a particular amount of those things which are indispensably necessary to the existence and support of the laboring classes in the community, and let the burthen of taxation fall as lightly as possible upon the portion least able to pay.—You may go down, if you please, to one hundred dollars; but cover the bed upon which the poor man reposes, and the cows necessary to give milk to his children.

Mr. *Bache* said: I should have preferred the section as it originally stood: but as it appears to be the inclination of the House to pass the amendment, taking it as the next best step, I shall vote for it.

The ayes and noes were called on the adoption of Mr. Van Zandt's amendment, and stood thus:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Clark, Darnell, Davis, Evans, Everts, Hemphill, Horton, Jewett, Kinney, Latimer of L., Latimer of R. R., Lumpkin, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt and Young—34.

Noes—Messrs. Brown, Burroughs, Caldwell, Cazneau, Cunningham, Forbes Gage, Henderson, Hicks, Hogg, Howard, Hunter, Irion, Jones, Lewis, Love, Lusk, Lipscomb and Runnels—20.

Adopted.

Mr. Evans offered the following as a substitute for the 27th section, as amended:

That all property subject to be taxed in this State, shall be taxed in proportion to its value.

Mr. Horton moved the previous question: which motion was carried.

The main question being the adoption of the 27th section, as amended, the ayes and noes were called for.

Mr. *Darnell* said: One word in explanation of my vote. I am in favor of the principle of *ad valorem* taxation: but upon a question of so much importance, I think the previous puestion ought not to have been put, and there is an amendment which I think ought to have been adopted. Consequently, I vote *no*.

Mr. *Hicks* said: This section is very exceptionable to me; but for for fear of making bad worse, and confusion worse confounded, I shall vote in favor of it.

The ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Clark, Cunningham, Davis, Everts, Gage, Hemphill, Hicks, Horton, Irion, Jewett, Jones, Latimer of L., Latimer of R. R, Lewis, Lumpkin, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt and Young—39.

Noes—Messrs. Brown, Burroughs, Caldwell, Cazneau, Darnell, Evans, Forbes, Henderson, Hogg, Howard, Hunter, Love, Lusk, Runnels and White—15.

So the section as amended was adopted.

Mr. Ochiltree offered the following as an additional section, to come in after the 28th section:

The Legislature of this State shall be precluded from passing laws authorizing the sale of intoxicating liquors in quantities less than one gallon: upon which

The ayes and noes were called, and stood as follows:

Ayes—Messrs. Baylor, Bagby, Cunningham, Davis, Hicks, Hogg, Howard, Lusk, McNeil and Ochiltree—10.

Noes—Messrs. President, Anderson, Armstrong of J. Armstrong of R., Bache, Brown, Burroughs, Caldwell, Cazneau, Clark, Darnell, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lipscomb, McGowan, Moore, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Van Zandt White and Young—44.

Which was rejected.

Mr. Hogg offered the following as an addition to the 28th section:

Provided that the Legislature may provide by law for the establishment of one State Bank for the use of the State.

The ayes and noes being called for.

Mr. *Hicks* said: With all due respect, Mr. President, for the principles of democracy, I shall certainly vote against the insertion of a clause of this kind in the Constitution. Not, sir, because I am a very warm advocate of the banking system: but because it does seem to me that it would be taking a stretch beyond our authority. According to my understanding of the nature and extent of our functions, the members of this body are assembled here, not for the purpose of legislating, but for that of establishing the great land marks of liberty. This question has been a moot one in the United States for the last fifteen or twenty years, and the leading point upon which the Whigs and Democrats have split. I am not willing then to give a vote which says to one of these parties, you are fools, and to the other, you alone are wise, intelligent and patriotic. I would vote, however, against any clause by which a Bank should be created. I am willing to leave this subject to be regulated by the necessities and wants of the people.

Mr. *White* said: With a view to keep the gentleman company in this matter, I shall vote *aye*.

The ayes and noes were then called, and stood as follows:

Ayes—Messrs. Hogg, Kinney, Lumpkin and White—.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Evans, Everts, Forbes Gage, Hemphill, Henderson, Hicks, Horton, Howard, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R, Lewis, Love, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, and Young—49.

So the amendment was rejected.

In the 28th section, Mr. Hunter moved to strike out all after the word "shall" to the word "banking", and insert the word "exercise".

Which motion was lost.

The question was then taken on the adoption of the 28th section.

The ayes and noes were called for.

Mr. *Runnels* said: As I am well aware that the opinions of the Convention are settled upon this subject, I shall offer no remarks upon it. I voted against the amendment, because, of all species of banking in the world, I think that which connects the State with banking is the worst. I believe, however, that this question ought to be left open to the people and their legislatures hereafter. The time may came when it may be the interest of the country to establish a Bank. It is true the country is not in a condition to do so at this time. I shall vote against the adoption of the section.

Mr. *Hogg* said: I am as much opposed to private banking as the gentleman from Brazoria can be to State banking. If I could have had the privilege granted the State to incorporate a State Bank for State purposes, for commercial purposes, for the purpose of carrying on the fiscal affairs of the State, I would have been and am as ready to oppose the incorporation of company Banks, as any man in Texas. I wish it distinctly understood, at this time, that I am opposed to banking. I have manifested my sentiments upon this subject in the eighth Congress. But I do contend that this Convention is arrogating to itself too much wisdom, too much knowledge of the future. Circumstances may occur to make it necessary for this State to have some banking privileges. But it would be useless for me to attempt to set forth any reasons here at this time: and as I am not disposed to make a speech to be written down by the Reporter, I will simply say that I shall vote against the section, for the sake of carrying out my views of propriety.

Mr. *Moore* said: I have ever been and am opposed to Banks in this country. But I believe that great evil may result from their establishment upon the border of Arkansas, near the line of this country, to supply Texas with all her circulating medium. I could wish to devise some means by which this evil may be remedied by modifying this clause. But having been unable to devise a plan which would meet the views of a majority of the committee or the Convention, I feel compelled to vote in favor of the section.

The ayes and noes were called, and stood thus,

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Howard, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McNeill, Miller, Moore, Navarro, Parker, Rains, Scott, Smyth, Standefer Tarrant, Ochiltree, Van Zandt, White and Young—47.

Noes—Messrs. Hicks, Hogg, Kinney, Love, McGowan, Power and Runnels—7.

So the section was adopted.

The 29th section was adopted.

In 30th section, on motion of Mr. Rusk, the blank was filled with 20, so as to read, "no corporation hereafter to be created, shall ever endure for a longer term than 20 years, &c.

On motion of Mr. Anderson, the Convention adjourned until half-past 8 o'clock, to morrow morning.

Thursday Morning, Aug. 7, 1845.

Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Journals of yesterday read and adopted.

Mr. Scott filed the following

PROTEST,

Which was ordered to be spread upon the journals, as follows:

The undersigned, having voted in the minority on the adoption of the section of the General Provisions, authorizing the Legislature to set apart for debtors, free from forced sale, [besides other property] two hundred acres of land, including the homestead, or lots not exceeding $2 000 in value, begs leave to file this his protest against the passage of the same, and have it entered upon the journals. The undersigned thinks he is as much under the influence of feelings of humanity as most of those in this body who have the welfare of the unfortunate, apparently so dear to them: such motives he respects, and when the truly unfortunate debtor can be protected by law, he deems it the sacred duty of the lawgiver to extend such protection, provided more good than evil is effected thereby. The legislator must deal in general rules, not make special laws for individual cases; and if the result of any such general laws will most probably be the promotion of evil rather than the attainment of good, every honest lawgiver is in duty bound to avoid such laws. If he does not act thus, he betrays his trust to God and to his country. The strong probability is, that the Legislature will go in favor of the debtor the full extent of the authority granted by this section; no one can doubt this who is in the least degree familiar with the course of our legislation for the last six or eight years Every law affecting the relation of debtor and creditor has, during that time, gone to favor and protect the former. The creditor who has trusted his hard earned substance to the honesty and integrity of his fellow, relying upon the law for the protection of his rights, when he asks for admission at the temple of justice, is spurned from its portals with the stern reply—"Begone, you unfeeling wretch, you deserve no aid!' No matter what arts have been used, not criminal by law; no matter what principle of morality has been violated by the debtor, in the attainment of his creditor's substance, when the latter seeks his rights, all our laws speak to him in terms of rebuke. The man who is thus deprived of his substance by art, fraud and cunning, is as much aggrieved as if his property had been feloniously taken from him. The man who steals my property, acquires no title thereby, and is condemned by the law; the man who obtains it by falsehood and cunning, acquires a title, and has the sympathy and countenance of the law. Should the mere means of obtaining the same end, cause such an immense difference it its results? The undersigned thinks it should not, and takes this method of publicly avowing his opinion. There are no doubt cases in which the misfortunes of a debtor may render him unable to pay his debts in money or property, but the undersigned, from his experience and observation, is satisfied that in a large majority of instances the honest debtor can either pay his debts in money or property, or have the sympathy of his creditor if he wills to do so; this is unquestionably the case in nearly every instance where the debtor has acted with honesty, industry and economy. It is the duty of the lawgiver to promote the growth of these last named virtues, and it is consequently a breach of duty to do any thing which in its consequences may retard or strangle that growth.

The 200 acres to be exempt from sale may be worth a very large amount, and still be exempt; the means that an honest debtor should apply to the payment of his debts may be applied by a dishonest one to improving this land, rearing manufacturing establishments, buildings for rent, and in many other ways, until it may amount to a princely fortune. Then will not this section, in all probability, hold out a strong temptation to dishohesty? The undersigned thinks it will, and his observation leads him to believe that many persons in this State will most vilely abuse this benificent provision; and he ventures to predict that three dishonest debtors to one honest and unfortunate one will be benefited by it; and as such he solemnly protests against its passage. All human action is impelled by rewards and punishments. The laws cannot reward good actions; but they can and should punish bad ones—not reward them. As a general rule, it is bad conduct in a member of society to violate his fair contract, and when he does so, his conduct should be frowned upon. Let the law exempt no species of property from forced sale, while an honest debt is unpaid; let the fact of failure to pay be *prima facie* evidence of fraud and dishonesty in a debtor; let the creditor have the power to arrest and detain his person, until all his estate is surrendered for the satisfaction of his debts, and you will hold over the debtor a powerful inducement for honesty of action, and you will take from him a powerful one to a contrary course, as at present held out by our laws. It is admitted that an honest and unfortunate debtor may occasionally be unjustly arrested and detained, but it should be borne in mind that such cases would be but few; and the undersigned thinks that the amount of good that would result by this check to dishonest conduct, would far outweigh the evil caused to the honest and unfortunate debtor;—sincerely entertaining this opinion, the undersigned voted against that clause in the Bill of Rights exempting from imprisonment the person of a debtor; and he still thinks that the language of the law should be to the debtor: "pay your just debts, or give up all your means of doing so, and your person and future acquisition shall be exempt from your creditors." Let the laws speak thus, and much of the fraud, cunning and duplicity that stalks abroad among us, in so much that the name of Texas has almost become, in other countries, a by-word and term of reproach, will disappear, and man, purified and regenerated, will harmonize in some degree with the works of nature, in this beautiful and fairy land.

But it is said that the credit system is an evil, and that our laws are calculated and designed to overthrow it. The undersigned, dissenting from the premises, freely admits the conclusion; but at the same time he must be permitted to say, that it is more manly in the lawgiver to strike openly and boldly at the evil; and not in a covert, insidious and ineffectual manner—a manner that does not eradicate the evil, but lays open the door to an immense amount of fraud and dishonesty. Let the lawmaker, if he wishes it, not make the debtor, by acting dishonestly, the means of overturning that system, but let him preserve the morals of the community, and by some other means effect the desired end. It should not escape our recollection, that the instrument we are framing will attract the gaze of most civilized and enlightened nations; that it has to pass the ordeal of that austere and intelligent body the United States Congress; and that it has been with much difficulty that our friends there have successfully supported our cause. It should also be recollected that our Legislature, unrestricted by us, would have full power to act upon this and all such subjects. Is it not then unwise and impolitic to incorporate in our fundamental law, a provision (whatever may be its humanity) somewhat novel in its character, unknown to other kindred instruments, and one which upon its very face bears the impress of insolvency and bad faith.

(Signed) JAMES SCOTT.

Mr. Lipscomb offered the following resolution:

Resolved, That the President of the Convention be authorized to appoint some person to record the journals and proceedings of the Convention in a bound book, and when completed, to deposit the same in the office of the Secretary of State, and that the person so appointed shall receive such compensation as is usually given for recording, the same to be paid out of the appropriation to defray the expenses of the Convention.

Laid on the table one day for consideration.

On motion of Mr. Parker, the Convention took up the

ORDERS OF THE DAY.

The report of the Committee on General Provisions being first in order was taken up.

Mr. Gage offered the following as an additional section, to come in after the 28th section.

"The Legislature shall provide by law for exempting from taxation two hundred and fifty dollars' worth of the household furniture or other property belonging to each family in this State."

Which was, on motion of Mr. Young, laid on the table.

Mr. Lipscomb offered the following as an additional section, to come in after the 30th section.

"No private corporation shall be created, unless the bill creating it shall be passed by two-thirds of both houses of the Legislature."

Mr. Rusk offered the following amendment to the additional section, which was accepted by Mr Lipscomb.

"And two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise."

On motion of Mr. Rusk, the additional section, as offered by Mr. Lipscomb, was laid on the table for the present.

On motion of Mr. Rusk, the vote adopting the 29th section was reconsidered.

Mr. *Rusk* then moved to strike out the 29th section. He said: this is a matter, the operation of which I do not understand. The inconveniences which would result from Legislative grants, such as those which might be necessary for educational and other purposes, would be a minor matter compared with the flood of evils which might be introduced by these two sections. It will be recollected by those conversant with the fact, that a general law of this kind was enacted in the State of New York. Under that law there was scarcely a single county which did not incorporate a bank, and some as many as four or five. The result was illimitable confusion and the greatest injury to the community. I have been informed that so great are its evils throughout the State of New York, that the people have been some time endeavoring to call a Convention to get rid of them, and enable them to extricate themselves from this mountain of difficulties. What would be the result of a general law authorizing certain individuals to do certain things, and to be considered a body corporate, with the full right to trade, to hold real estate, to purchase and sell, and the like? Some four or five speculators, who wish to make a fortune by their wits, and not by their labor, will get together and form a corporation, and we shall have a Bucksnort Land Company, or something of that sort. They will operate largely, contract debts, and flood the country with their scrip. When the evil has grown up to an insupportable height, when the community has been swindled, the Legislature will repeal the grant, by a majority of two-thirds. There may be thus formed in Texas a thousand corporations, land-selling, lot-selling, manufacturing corporations, by which nobody will suffer but the community. I think it better to pursue a medium path. It is no recommendation that these provisions come from the Constitution of Louisiana; we do not know all the circumstances which exist there. The only benefit here would be, that the Legislature would not be troubled with applications for private corporations; and that is a little matter compared with the evils which may result from this action.

The ayes and noes were called upon the motion to strike out, and are as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton. Howard, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R R., Lewis, Love, Lumpkin, Lusk, Lipscomb, M'Gowan, M'Neill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—51.

Noes—Messrs. Bache, Brashear and Evans—3.

So the section was stricken out.

On motion of Mr. Rusk, the vote adopting the 30th section was reconsidered, and on his motion the section was stricken out.

Mr. Caldwell moved to reconsider the vote adopting the 28th section, for the purpose of offering the following as a substitute for said section:

"No corporate body shall hereafter be created, renewed, or extended, with banking or discounting privileges, except by the consent of two-thirds of the Legislature, and the act of incorporation shall not take effect until the same be approved by two-thirds of the Legislature returned by a general election after the passage of the act."

Mr. *Caldwell* said: I propose this with more confidence than I would have done at an earlier hour, seeing the House disposed to reconsider the hasty action of yesterday. If we consider the people capable of self-government, most certainly the amendment which I propose may be deemed wholesome and salutary; if they are incapable of self-government, the section had better stand as it is. I propose in that amendment to prevent all hasty legislation, to interpose a complete barrier against the corrupt influences which may be brought to bear upon any one Legislature, and to alter these provisions with the same solemnity demanded for an alteration of the Constitution, as provided for in the bill as it now reads. As it now stands, I think the people could arrive at the same end by altering the Constitution. The proposition I there make is to carry out the calm and deliberate will of the people, without interfering with that instrument. I think that after two-thirds of the Legislature have passed upon such an act, and the people have considered the subject for one or two years, and another Legislature have approved it, we may fairly conclude that the calm and deliberate judgment of the nation is in favor of something of the sort. There is no danger that our country will be overrun with banking institutions, like some of the Southern States. I am very much afraid, that by cutting them off entirely, our country will be flooded with promissory notes of private individuals. These matters of expediency should be left to the people, and if they decide upon a measure, after calm deliberation, they should have it. No corrupt or foreign influences can be brought to bear in this matter, as I propose it.

Mr. President *Rusk* said: I am very sorry that I cannot vote for the reconsideration. I would always prefer to do so, where the question is at all of a doubtful character. And I feel, too, that I am not acting quite so generously as I would wish to do. But this subject of banking in all its forms I am opposed to. If it took five years to obtain such a provision, I should still be opposed to it. Influences would be brought to bear upon every Legislature in succession, till the whole country would be flooded. So far as I am concerned, I desire to see such a provision incorporated in the Constitution, that we never can have a bank.

Mr. *Davis* said: I would like to gratify the gentleman who moved the reconsideration, but upon this occasion I cannot. I am bound to oppose the reconsideration: first, upon principle; and secondly, because I feel myself instructed upon this point by the citizens of the county which

I have the honor in part to represent. If it should be demanded by necessity at any time, to create a Bank for the State of Texas, it seems to me that the question should be presented to the people of the State of Texas, and let them take action upon it by way of an amendment of the Constitution. And I never want to see a bank established until the people have acted upon the subject. It would be insulting the understanding of this Convention, were I to call their attention to the wide spread ruin and destruction which have resulted in the United States from the establishment of banks. I will not detain the business of the House by doing so I think that every individual here has made up his mind upon the subject. If the substitute is adopted, we shall find men of intelgence and capital hovering around the Legislature of the country, And I would ask you if it will not be as easy to buy up the members of the Legislature of Texas, as those of the Congress of the United States? We have seen individuals of high standing, men supposed to be of sterling merit, changing their opinions in relation to the Bank of the United States, in consequence of an intimation that five, ten, or twenty thousand dollars could be loaned to them. Might not the same course be pursued in the State of Texas? I entertain the opinion that the members of the Legislature of Texas will not be more virtuous than the members of the Congress of the United States. A little exertion can be made, and you will find the two thirds in favor of such an act. They will go back, mount the stump, and make speeches before the people upon its necessity and propriety; and if they succeed in convincing the people, at the next session there will be two thirds again, and the bank will be established. Gentlemen talk about tying up the hands of the people. Sir, I would be in favor of prohibiting the people of Mississippi from making a bank to all eternity.

Mr. *Kinney* said: I will in the first place confess, that this subject of banks is one which I do not very well understand. However, in the course of my life I have seen both the advantages and disadvantages of banking institutions. But I will not pretend to speak of the good or evil which may arise from them. I shall only advert to the liberality which I see exhibited in this House, with regard to matters which concern the people and the country at large. I see gentlemen here very liberal in reconsidering those things which they themselves think beneficial to the public; they do not leave them to the people, but decide upon them themselves. I ask you, even if we here as individuals, considered this an improper institution, which would injuriously affect the public at large, whether it would be wrong in itself, if the great mass of the people should consider it right? Who will suffer by it? Who rule? Who have the right to rule? Is it not the majority? And by the adoption of the substitute offered by the gentleman from Bastrop, I cannot see that any injustice will fall upon the head of any one. It does seem to me that there is a great deal of illiberality displayed upon this subject. As I say, there are a great many objections to these institutions, and they have also done a great deal of good. There are a great many objections to laws which have been passed upon other subjects, materially affecting the interests of the people, and there are also advantages connected with those laws. I believe it would be impossible hereafter to carry on the fiscal affairs of this country without some institution of this kind. What will be the result of a provision of this kind? Mr. Mills or Mr. Kinney will issue his individual notes, and if his credit is good, they will become the circulating medium, and this will give rise to more frauds upon the community than the system here attacked. There are obligations and guarantees to the people given by these institutions, which are created by them, which render them a great deal more secure than any individual could be. I know of banking institutions which went into existence long before I was born, in the State of Pennsylvania, which have never to my knowledge failed to pay any note or liability, and which have been kept up from the commencement to this day. I know that by means of those institutions many have been enabled to place themselves in affluence. I have heard men say, who are as much opposed to banking institutions as any in this body, that they have amassed most of their fortunes by means of the advantages which they have received from banks. But they go against banking as a principle, because others have not done as well as they. It does seem to me that gentlemen are going too far in prohibiting the people from establishing such institutions hereafter as they may deem advisable and best. I would be opposed myself to establishing a bank; there I go as far as any; but I will not say that the people shall not do what they conceive for their interest, but shall do what I think for their interest. I think by adopting the substitute of the gentlemen from Bastrop, we shall leave the question entirely open to the majority of the inhabitants of the country hereafter to act upon. I do not wish by my voice to say to the majority of the yeomanry of the country, that they shall not rule.

Mr. *Van Zandt* said: I hope the motion to reconsider will not prevail. I am opposed to banking upon general principles; but at the same time I am willing to confess that perhaps the time may arise in the history of the country, when the best public interest may demand the charter of an institution of some kind, with banking privileges. I believe, however, that this case is amply provided for in the 34th section. If the time should ever come when stern necessity shall call for a bank charter, the people will be aware of that fact, and quick to discern it. Gentlemen seem to be of opinion that this matter is to be discussed before the people as an isolated question. Now, sir, there will be other questions which may control the elections; there may be the question of Whig and Democrat, or others which may be powerful enough to control the elections, regardless of a question like this. But if the public necessity demands such a charter, the people will be aware of it, and when called upon to cast their votes, directly for or against it, their views will be ascertained beyond the possibility of a doubt. Then, I say, that the method by way of amendment to the Constitution is far preferable as a test of the popular voice than that proposed in the substitute of the gentleman from Bastrop. No one can deny, that an important question coming up on the eve of a great election, may be wholly swallowed up.

Mr. President *Rusk* said: I will trouble the House only for a single moment, I dislike to be charged with illiberality; I think that as far from me as any thing is. I cannot, however, extend my liberality so far as to open a question which has been decided, and upon which we should again come to the same conclusion. I must, therefore, vote against the reconsideration of the 28th section, the adoption of which, I think, will be closing the door against fraud and corruption, and will prevent much human suffering. I think, as a member of the Convention and the community, that it is due to myself, the country, and the people themselves, to restrain them from doing any thing which would result in their injury. The gentleman from San Patricio says that many individuals have been benefitted by banks Thousands upon thousands, sir, have been ruined by them. I consider it a bright page in the history of General Jackson, that he had the honor of giving the blow which will eventually destroy them upon this continent And I wish by no vote of mine, here or elsewhere, to authorize the institution of a bank, which may benefit a few individuals, but will carry, here as elsewhere, ruin, want, misery and degradation in its train.

Mr. *Brown* said: I am very sorry that I am under obligation to oppose the motion to re-consider. The only criterion which will govern my action here, is the right or wrong of a matter, and not whether at the present or any future time it will be agreeable to the people. For if I believed that the voice of my constituents would demand a measure to which I am opposed, I would resign my place in this Convention, and give them an opportunity to act through some other person. I will not assent to any principle or doctrine which I believe to be radically wrong, hurtful to the government, and subversive of all the good morals of society. I look upon the banking principle as injurious to the good morals of the community. I look upon it as an artifice invented by the cunning, to practise frauds upon the ignorant. I am forever opposed to the establishment of any institution which cannot be revised by the people; and I defy any one to find a republican government in which the people can tell whether a bank is rightfully or wrongfully administered. The principle which will govern my vote is the soundness or unsoundness of a provision, and not its popularity with the people hereafter. I will go further and oppose the 34th section also. As the section now stands, I would absolutely prohibit banks, and would leave no method for the establishment of these institutions, except by a radical change of the whole Constitution The Constitution is a unit, and the hazard of a change throughout should be incurred, or with my vote it should not be changed at all I regard the principle proposed to be substituted as a wrong one, and I do not regard any majorities hereafter; and even looking to that at present, if it were necessary for me to vote for the amendment of the gentleman from Bastrop, in compliance with the will of my constituents, I would refuse to perform the act.

Mr. *Lusk* said: I shall vote against the re-consideration, though I would like to extend the courtesy. But this subject is one with regard to which I am under a promise to my constituents. In a public address from the stump, I declared to the people if elected, I should be opposed to banking in any manner or style. I believe that a majority of the people, if they wish a bank, can have a Convention and authorize one. The gentleman from Bastrop is placing it, I think, further out of the power of the people than I am.

The ayes and noes being called on the re-consideration, were as follows:

Ayes—Messrs. Caldwell, Cazneau, Evans, Hicks, Hogg, Kinney' Love, Lumpkin, McGowan, Navarro, Power, Runnels and White—13'

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown Burroughs, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Howard, Holland, Hunter, Irion, Jewett, Latimer of L, Latimer of R. R., Lewis, Lusk, Lipscomb McNeill, Miller, Moore, Parker, Rains, Scott, Smyth. Standifer, Tarrant, Ochiltree, Van Zandt and Young—43.

So the motion was lost.

The additional section offered by Mr. Lipscomb, was then taken up.

Mr. Brown offered the following amendment, which was accepted:

The State shall not be a part owner of the stock or property belonging to any corporation.

The additional section was then adopted.

Mr. Runnels offered the following as an additional section, to come in after the 6th section:

The Legislature shall provide by law, the compensation of all officers, servants, agents and public contractors, not provided by this Constitution, who are to be paid from the treasury of the state, and shall not grant extra compensation to any such officer, servant, agent or public contractor, after such public service shall have been performed, or contract entered into for the performance of the same, nor grant, by appropriation or otherwise, any amount of money out of the treasury of the state to any individual on a claim, real or pretended, when the same shall not have been provided for by pre-existing law.

Which was adopted.

Mr. Evans offered the following, to come in after the 28th section:

The Legislature shall prohibit the issuing or circulating of printed, engraved or lithographed bills, or other paper intended to circulate as money.

Mr. Hogg offered as a substitute for Mr. Evans' additional section, the following:

If any person or persons shall be guilty of tendering or passing the promissory note or notes of an individual or individuals as money, to pass or circulate as money, in lieu of gold or silver, as a circulating medium, shall be fined and imprisoned, as may be directed by law.

Rejected.

Mr. Rusk offered as a substitute for Mr. Evans' additional section the following:

The Legislature shall have the power to pass laws for prohibiting in this State the issuance or circulation of all individual, company or corporation notes as money.

Adopted.

The question was then taken on the substitute, which was adopted as an an additional section.

On motion of Mr. Love, the vote just taken adopting the substitute offered by Mr. Rusk as an additional section was re considered; and, on motion of Mr. Rusk, the substitute and the additional section offered by Mr. Evans, were referred to the committee on General Provisions.

In 31st section, Mr. Brown moved to strike out all after the word "insurrection" in 3d line: upon which

The ayes and noes were called, on the re-consideration, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby Bache, Brashear, Brown, Caldwell, Clark, Cunningham, Cuney, Davis, Evans, Forbes, Gage, Hemphill, Hogg, Horton, Howard, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Moore, Navarro, Parker, Power, Scott, Smyth, Standifer, Tarrant and Young—42.

Noes—Messrs. Baylor, Burroughs, Cazneau, Darnell, Henderson, Kinney, McNeill, Rains, Runnels, Ochiltree, Van Zandt and White—12.

Carried.

Mr. Ochiltree offered the following substitute for the 31st section:

The Legislature of this State shall be forever inhibited from pledging the faith of the State for the purpose of procuring any amount of money by loan.

Mr. Lewis offered the following substitute for Mr. Ochiltree's substitute, which was accepted:

No money shall ever be borrowed on the faith of the State.

Mr. Forbes moved to amend by inserting the following, after the word "insurrections" in 31st section:

But in no case shall any amount be borrowed, except by a vote of two-thirds of both Houses of the Legislature.

Mr. Young moved the previous question.

The question—shall the main question be now taken? was put; upon which the

The ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of R., Burroughs, Bagby, Clark, Cunningham, Hemphill, Henderson, Horton, Holland, Irion, Jewett, Kinney, Latimer of R. R., Lumpkin, McNeil, Navarro, Van Zandt and Young—19.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brashear, Caldwell, Cazneau, Cuney, Darnell, Davis, Evans, Forbes, Gage, Hogg, Howard, Hunter, Lewis, Love, Lusk, Lipscomb, McGowan, Miller, Moore, Parker, Power, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and White—32.

So the motion was lost.

The ayes and noes were then called on Mr. Forbes' amendment, and stood thus:

Ayes—Messrs. President, Armstrong of R., Bagby, Brown, Caldwell, Cazneau, Cunningham, Davis, Evans, Forbes, Gage, Horton, Irion, Jewett, Kinney, Love, Lumpkin, Lipscomb, McGowan, Miller, Parker, Rains, Scott, Smyth, Standifer, White and Young—27.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brashear, Burroughs, Clark, Cuney, Darnell, Hemphill, Henderson, Hogg, Howard, Holland, Hunter, Latimerof R. R., Lewis, Lusk, McNeill, Moore, Navarro, Power, Runnels, Tarrant, Ochiltree and Van Zandt—26.

So the amendment was adopted.

On motion of Mr. Hemphill, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Friday, Aug. 8th, 1845.
Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

The Committee on General Provisions, Isaac Van Zandt, chairman, made the following report, which was laid on the table, to come up with the orders of the day.

Committee Room, Aug. 8th, 1845.

To the Hon. THOMAS J. RUSK,

President of the Convention:

The Committee on General Provisions have had under consideration two resolutions which were referred to them, on the subject of slaves: after mature deliberation, they have instructed me to submit the following as a substitute for both, and respectfully recommend its adoption:

ISAAC VAN ZANDT,
Chairman of the Committee.

Substitute.

The Legislature shall not have power to pass any laws for the emancipation of slaves without the consent of the owner; nor shall the owner emancipate his slaves without the consent of the Legislature, unless he sends them beyond the limits of the State. The Legislature shall pass laws to prohibit cruelty to slaves, and unusual punishments.

2d. In the prosecution of slaves for crimes of a higher grade than petit larceny, the Legislature shall have no power to deprive them of a trial by an impartial jury, in the District Court.

The same Committee made the following report:

Committee Room, Aug. 8, 1845.

To the Hon. THOS. J. RUSK,

President of the Convention:

The Committee on General Provisions of the Constitution, to whom was referred two resolutions proposing to vest the Legislature with power to prohibit the circulation of lithographed, and other bills of individuals and companies, as money, have had the same under consideration, and have instructed me to report the following substitute, and respectfully recommend its adoption.

ISAAC VAN ZANDT,
Chairman.

Substitute.

The Legislature shall prohibit individuals from issuing bills, checks, promissory notes, or other paper, to circulate as money.

Which was laid on the table, to come up among the orders of the day.

Mr. Jewett moved a reconsideration of the vote adopting the additional section offered by Mr. Runnels, on yesterday, to come in after the 6th section, requiring the Legislature to provide by law, for the compensation of all officers, &c, and prohibiting them from granting extra compensation to any such officer, &c.

Which motion was laid on the table.

On motion of Mr. Bagby, the Convention took up the

ORDERS OF THE DAY.

The amendment of Mr. Lewis to the 31st section of the report of the Committee on General Provisions, providing that "no money shall ever be borrowed on the faith of the State," being first in order was taken up.

Mr. Lewis moved to refer the amendment to a select committee. Lost.

The ayes and noes being called, on the adoption of the amendment, stood as follows:

Ayes—Messrs. Armstrong of J., Bache, Brashear, Burroughs, Cazneau, Cuney, Davis, Gage, Hogg, Hunter, Lewis, Lumpkin, Parker, Power, Runnels, Standefer and Ochiltree—17.

Noes—Messrs. President, Anderson, Armstrong of R, Baylor, Bagby, Brown, Caldwell, Clark, Cunningham, Darnell, Evans, Everts, Forbes. Hemphill, Hicks, Horton, Howard, Holland, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Love, Lusk, Lipscomb, McGowan, M'Neill. Miller, Moore, Navarro, Rains, Scott, Smyth, Tarrant, Van Zandt, White, Wright and Young—39.

Rejected.

Mr Armstrong of J., moved to strike out all after the word "dollars," i 2d line, 31st section. Lost.

Mr. Anderson moved to insert, after the word "dollars," "at any one time," in 2d line. Lost.

Mr. Armstrong of J., moved to strike out the words "except in case of war." Lost.

Mr. Forbes moved the previous question.

The question, shall the main question be now taken? was put and carried.

The main question being the adoption of the 31st section as amended. the ayes and noes were called for.

Mr. *Ochiltree* said: He should vote *aye*, for the purpose of moving a reconsideration, with a view to offer a substitute.

The ayes and noes were then called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Bagby, Bache, Brashear, Brown, Burroughs, Cazneau, Clark, Cunningham, Darnell, Forbes, Hicks, Horton, Howard, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R, Love, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Parker, Power, Rains, Scott, Smyth, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—40

Noes—Messrs Armstrong of J., Baylor, Caldwell, Cuney, Davis, Evans, Everts, Gage, Hogg, Hunter, Lewis, Lumpkin, Runnels, and Standefer—14.

So the section was adopted.

Mr. Hogg offered the following amendment to the 32d section:

Add, at the beginning, "The Legislature shall at the first session thereof, and may at any subsequent session, establish new counties, for the convenience of the inhabitants of such new county or counties. provided that." Which amendment was adopted.

Mr Hicks offered the following amendment to the 32d section:

Add, after the word "contents," in 3d line, "nor shall any county site be removed, unless two-thirds of the qualified voters of such county shall vote for such removal." Rejected.

Mr. Tarrant offered the following amendment, to come in in 3d line after the words "square miles," "except the county of Bowie."

Mr. *Tarrant* said: The county he represented was so situated that it was hard to be divided, and could not have 900 square miles; it must lack some fifty or sixty. It would be impossible to cross Sulphur fork so as to take in a sufficient quantity. He therefore moved to except the county of Bowie. He would not have made the motion, had it not been a matter of great consequence to that county, which at present was entirely too large.

The amendment was adopted.

Mr. Everts moved to strike out all after the word "contents," in 3d line, 32d section. Lost.

Mr. Lipscomb moved to amend by adding, after the words "square miles," the words "unless by the consent of two-thirds of the Legislature." Adopted.

The section, as amended, was then adopted.

Mr. Davis moved to strike out the 33d section.

He said: I hold the doctrine to be well established, that a State has the right to exercise jurisdiction throughout her chartered limits. If we adopt this, it would be believed that she could not exercise jurisdiction throughout her chartered limits without the consent of the United States. I hold that it is not necessary, if we acquire territory, to pass any act of the Legislature extending the jurisdiction of the State. I see no necessity for asking permission of the government of the United States, to extend our jurisdiction; because as soon as we acquire territory, jurisdiction extends of course. I hold that separate communities cannot exist within the limits of a State.

The motion was lost.

Mr. *Rusk* moved to reconsider the vote refusing to strike out the 33d section. He said: I make the motion now for the purpose of saving time. I sincerely wish that the future Constitution of Louisiana had remained locked up until our labors were over. We have received no benefit from it, and have come very near incorporating some articles which would have been ruinous to Texas. We can reflect for ourselves, and are capable of forming a Constitution for ourselves. I see a difficulty in regard to the Western boundary of Texas. Mexico has insisted upon this very Colorado as the true boundary, and will hereafter perhaps contend for the Nueces. It will be gravely asked, why did we put this article in the Constitution, unless as a tacit admission that we have no claim to the Rio Grande; why did we insert an article authorizing our acquisition from the United States of this very territory? We claim the right to the Rio Grande, we claim the entire limits defined in 1836. We have maintained ourselves in that territory. The Mexican generals in treating with us ordered their troops to go beyond the Rio Grande; that was a tacit acknowledgment of our claim to that boundary. If we adopt this in our Constitution, will it not be a tacit acknowledgmet that we have not a just claim to that territory? I may be in error; but I trust the Convention will not adopt it, because they find it in the Constitution of Louisiana.

Mr. *Hemphill* said: He hoped it would be thrown out; it might do harm, but could not do any good

After some slight discussion, the vote was reconsidered.

Mr. Rusk then moved to strike out the 33d section.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Howard, Irion, Jewett, Kinney, Latimer of L., Latimerof R.R , Lewis, Love, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, Ochiltree, White, Wright and Young —52.

Noes—Messrs. Evans, Hunter, and Van Zandt —3.

So the section was stricken out.

Mr. Bache offered the following as an additional section, to come in as the 33d section

"The Legislature shall have power to erect new States out of the territory of this State, of convenient size, not exceeding *four* in number, in addition to this State, whenever sufficient population may authorize such erection, agreeably to the provisions of the Constitution and laws of the United States, to be admitted as separate States into the Union."

Mr. Hemphill moved to refer the additional section to the Committee on General Provisions. Lost, and

On motion of Mr. Rusk, referred to the Committee on the Judiciary.

On motion of Mr. Hemphill, the report of the Committee on General Provisions was laid on the table for the present.

Mr. Hemphill, chairman of the Committee on the Judiciary, made the following report:

Committee Room, Aug, 8, 1845.

To the Hon. Thos. J. Rusk,

President of the Convention:

The Committee on the Judiciary, to whom was referred the propriety of declaring in the Constitution, that "all persons who left the country for the purpose of evading a participation in the revolution of 1836, or who refused to participate in it, or who aided or assisted the Mexican enemy, shall forfeit all rights of citizenship, and such lands as they may hold in this State," have instructed me to report against the expediency of inserting such a provision in the Constitution. The ordinary powers of legislation will authorize the adoption of the necessary means for the investigation of this and other classes of forfeitures, and such disposition and appropriation of them as may be most conducive to the ends of public justice and advancement of the common welfare.

All of which is respectfully submitted.

JOHN HEMPHILL,
Chairman.

The same committee made the following report:

Committee Room, Aug. 8, 1845.

The Committee on the Judiciary, to whom was referred the propriety of inserting, among the General Provisions of the Constitution, the following section, viz: " The legal effects of all marriages now, or heretofore subsisting, shall, for the future, be held and taken to be the same as though such marriages had been good and valid from the beginning: *provided*, that nothing herein contained shall work any revocation of vested rights," have had the same under consideration, and have instructed me to report, that the adoption of the provision would be unnecessary and inexpedient The laws already legalise and confirm marriages where the rites of matrimony have been celebrated by bond, or by officers supposed to be not properly authorized for that purpose.

The Legislature, in the exercise of its ordinary powers, will have competent authority to legalise marriages not already confirmed; and in many particulars, to establish, by proper regulations, the rights, duties and obligations arising from the contract of marriage.

And your committee pray to be discharged from the further consideration of the subject.

JOHN HEMPHILL,
Chairman.

The same committee also made the following report:

Committee Room, Aug. 8th, 1845.

The Committee on the Judicial Department of the Government, to whom was referred a resolution instructing them to inquire into the propriety of authorizing the Legislature to establish separate chancery courts, whenever it shall be deemed expedient to do so, have had the same under consideration, and have instructed me to report—that the present system of administering justice in the same court, according to principles of both law and equity, or either, as the circumstances of the controversy may demand, has been long established—is well understood, and possesses too many advantages to be lightly abandoned; they therefore deem it inexpedient to confer on the Legislature, the authority contemplated by the resolution; and pray to be discharged from the further consideration of the subject.

JOHN HEMPHILL, Chairman.

All of which reports were laid on the table, to come up among the orders of the day.

Mr. Gage moved to take up the first report relative to forfeitures.—Lost.

On motion of Mr. Burroughs, the report of the committee on General Provisions was again taken up.

Mr. Horton offered the following, as a substitute for the 34th section:

"*Mode of amending the Consitution.*

"The Legislature, whenever two-thirds of each house shall deem it necessary, may propose amendments to the Constitution; which proposed amendments shall be fully published in print, at least three months before the next general election of representatives, for the consideration of the people; and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the Secretary of State, for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments: and if, thereupon, it shall appear that a majority of all the citizens of this State, voting for representatives, have voted in favor of such proposed amendments, and two thirds of each house of the next Legislature shall, after such election, and before another, ratify the same amendments by yeas and nays, they shall be valid to all intents and purposes, as parts of this Constitution: *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read on three several days in each house"

Mr. *Horton* said: I admit that this is not abstracted from any portion of the Constitution of Louisiana. The object of introducing it as a substitute is simply this: We anticipate a very considerable emigration to this State. By and by factions may spring up, become well organized, and endeavor to alter some feature of the Constitution which we desire to preserve if possible. This section will give greater stability to the Constitution. It will provide against any excitement which may be gotten up among the people, and give them time to correct any error into which they may fall.

Mr. *Van Zandt* said: I am not exactly satisfied with either proposition: but between the two, I prefer the section as reported.

Mr. *Baylor* said: I hope the proposed amendment will be made. I think it is calculated to give greater stability to the government, and we know that it is one of the great considerations in forming a republican government, not only to secure the great and essential principles of liberty and protection of the person and property, but at the same time to give that stability so desirable in popular governments. Again: I think it will be found in practice better calculated to secure a certain interest concerning which almost every gentleman in this House has manifested such an extreme sensibility; I mean the great slave interest. If we have the population which we expect, two-thirds of the population may be very small slaveholders, and perhaps one-third will not be the owners of a slave at all. A provision of this kind was adopted in Alabama, after great deliberation.

Mr. *Brown* said: If I could have believed that such a motion would have been successful, I would have moved to strike out the whole of the 34th section, and left no means in the power of the people of altering the Constitution except by calling a Convention. I would have it so that when an attempt is made to change the Constitution in one respect, they should at least incur the hazard of changing it *in toto.* In the Virginia Convention, it was proposed to make a provision of this kind for changing the Constitution; the subject was discussed, and the vote stood 68 to 23, and among those who voted against it were the names of Madison, Marshall, and a host of distinguished sages and patriots. They had such a proposition before them; they rejected it, and left the Constitution without any means of alteration except a Convention. I had no hopes that any motion of the sort to which I have alluded would prevail; I therefore did not make it. The next thing to that is to make it as difficult as would be consistent with reason and the necessity of things to make a change in this Constitution. And the proposed amendment seems preferable to the section as reported.

Mr. Forbes moved a call of the Convention. Lost.

Mr. *Bache* said: I shall vote against the amendment; because I have no idea of giving a veto power to the Legislature against the people.

Mr. *Tarrant* said: Though I would prefer another provision, yet as this interposes some degree of difficulty in the way of altering the Constitution, I shall vote *aye.*

The ayes and noes being called, on the adoption of the substitute, were as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bagby, Brown, Burroughs, Caldwell, Cazneau, Cunningham, Cuney, Davis, Everts, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Howard, Irion, Jewett, Kinney, Latimer of L, Lewis, Love, Lusk, Lipscomb, McGowan, Miller, Moore, Navarro, Power, Rains, Runnels, Scott, Standefer, Tarrant, Ochiltree and Wright—40.

Noes—Messrs. Armstrong of J., Bache, Brashear, Clark, Darnell, Evans, Hunter, Latimer of R. R., Lumpkin, McNeill, Parker, Smyth, Van Zandt and White—14.

So the substitute was adopted.

Mr. Anderson offered the following amendment to the substitute:

"And the same amendment shall not be made oftener than once in every five years".

Mr. *Anderson* said: It imposes some restriction as to time. It is necessary to throw as many difficulties in the way as the nature of the case will admit of. Experience has shown the necessity of restrictions of this kind.

Mr. *Lipscomb* said: I hope no such provision will be adopted. I am afraid that after doing our best, we shall make but bungling work of the Constitution. The people may discover, before they vote upon this Constitution, that there are great objections to it, and that many amendments ought to be made; but they will vote for it, so anxious are they to get into the Union, with all its sins and imperfections upon its head. And I am in favor of leaving it to the people to make these amendments. I would prefer to have no other mode of alteration except by way of Convention. But I so much fear imperfections of this kind, that I hope no restriction will be imposed, further than is absolutely necessary.

Mr. *Anderson* said: All admit that sudden changes are injurious to the community. I am well aware that there may be defects in the Constitution, but it is a question whether it would not be better to bear the evils resulting from them, than to risk those which might possibly creep in. This provision would prevent confusion in the Legislature. I do not stickle for the period of five years: but I think some such restriction necessary.

The amendment was rejected, and the section, as substituted, adopted.

Mr. Evans offered the following, as an additional section, to come in after the 34th section:

"for the purpose of securing to the people, a safe mode of changing or improving their Constitution, the Legislature shall, every ten years, submit to a vote, a proposition to convene a Convention; and if a majority of the qualified voters of the State are in favor of a Convention, the Legislature shall provide for convening a Convention."

Rejected.

Mr. Navarro offered the following, as an additional section, to come in as the 35th section:

"No soldier shall, in time of peace, be quartered in the house, or within the enclosure of any individual, without the consent of the owner; nor in time of war, but in a manner prescribed by law."

Adopted.

Mr. Evans moved to strike out the first section, under the head of *impeachment*. Lost.

On motion of Mr. Young, the first section was adopted.

Mr. Evans moved to strike out the 2d section. Lost.

On motion of Mr. Runnels, all after the word "Senate," in the 3d line of the 2d section, was stricken out, and the section as amended was adopted.

In 5th section, Mr. Howard moved to strike out all after the word "impeachment" in 3d line. Lost.

Mr. Forbes moved to strike out the words "their functions," and insert "the functions of their office." Lost.

Mr. Love moved to strike out the words "their functions," and insert "the duties of their office." Carried; and the 5th section as amended was adopted.

In the 6th section, 2d line, Mr. Evans moved to strike out the word "other." Lost.

Mr. Everts moved to insert the word "county," after the word "state," in 6th section. Lost.

On motion of Mr. Forbes, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment—roll called—quorum present.

The Convention took up the report of the select committee, D. Gage, chairman, to whom was referred the 7th section of the General Provisions; and the following amendments recommended by said committee, were adopted:

In the 1st line, strike out the words "at large;" and strike out the entire section after the word "law," in the 3d line

The Convention took up the report of the committee on General Provisions, upon the subject of vesting the Legislature with power to prohibit the circulation of lithographed bills, &c., as money.

Mr. Hemphill moved to insert, after the word "individuals," the words "or corporate bodies." Carried.

The substitute, as amended, was then adopted, to come in after the 28th section.

Mr. Evans offered the following, as an additional section, to come in between the 6th and 7th sections:

"The Legislature shall never legislate upon any private claims—individual or separate case; no relief law, special law, or individual law, shall ever be passed; no resolution expressing the opinion of the Legislature, or eulogizing abstract principle, party, or individual, shall ever be adopted."

Rejected.

Mr. Evans moved to strike out the 1st, 2d, 3d, 4th and 5th sections, and the word "other," in the 6th section, under the head of "impeachment:" which motion was seconded by Mr. Ochiltree.

Mr. Runnels moved to re-consider the vote adopting the 1st section, under the head of "impeachment."

Upon which the ayes and noes were called, and stood as follows.

Ayes—Messrs. Anderson, Bache, Brashear, Caldwell, Cazneau, Evans, Everts, Gage, Hunter, Latimer of R. R., Lewis, Love, Lusk, McGowan, McNeill, Power, Runnels, Standifer and Ochiltree—19.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Bagby, Burroughs, Clark, Cunningham, Cuney, Davis, Forbes, Hemphill, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Kinney, Latimer of L, Lumpkin, Lipscomb, Moore, Navarro, Parker, Rains, Scott, Smyth. Tarrant, Van Zandt, White, Wright and Young—34.

So the Convention refused to re-consider.

On motion of Mr. Van Zandt, the Convention took up the sections on the subject of slaves, reported by the committee on General Provisions, to come in after the 18th section.

Mr. *Lusk* said, he wanted it inserted that no owner shall be permitted to emancipate his slaves, without providing that they shall not become a charge upon the community.

Mr. *Moore* said: The object of the gentleman is attained by the provision that owners shall no emancipate their slaves without the consent of the Legislature. It is to be supposed that the Legislature will not permit it without such provision.

Mr. *Lewis* said, he thought the object was not provided for. He thought that if emancipated slaves were to remain in the State, the owner should be required to make provision to maintain them.

The substitute offered by Mr. Runnels was adopted.

Mr. *Hemphill* said: There is a part of that section relating to the trial of slaves which I do not like well. If they were to rise in insurrection, I think it would be difficult to comply with that provision of the section, unless you make some extraordinary provision for the District Courts sitting at a different time from now. In case of insurrection, it would be necessary to establish a court differently constituted from the District Court. It is almost impossible, at present, to punish a white person, and it would be equally so to punish a slave, with the same privileges. In relation to the clause which speaks of cruelty, I think it better to use a different mode. In some of the States, as Alabama for instance, owners are obliged to treat their slaves with humanity, and provide for them necessary food and clothing. As to cruelty, there are very different degrees of it.

Mr. Hemphill offered the following amendment to the substitute: after the word "laws," strike out the words "to prohibit cruelty to slaves, and unusual punishments," and insert in lieu thereof, the words "to oblige the owners of slaves to treat them with humanity, and to provide for them necessary food and clothing."

Mr. *Runnels* said: Providing for the trial of slaves in the District Court would amount to giving them no trial at all. They will be hung without it, as in many of the States, in case of insurrection. Unless a summary mode of trial is provided in such cases, the innocent will be punished for the guilty. I will offer an amendment.

Mr. Hemphill's amendment was adopted.

Mr. Van Zandt moved to insert after the word "larceny," the words "except in cases of insurrection;" which was adopted.

Mr. *Hemphill* said. I will move to strike out all after the words "impartial trial." If I cannot get the whole, I will move to strike out that part relating to the District Courts. A very singular state of things exists in relation to slavery. In one respect, slaves are property, and in another, they are human beings. It is not to be supposed that the same laws apply to them which apply to white persons. In many points of view they are property, as much as horses and cattle. I think if we say any thing at all about the justice to be meted out to slavery, it is sufficient to say that they shall have an impartial trial. In the State from which I come, they have as impartial justice as any where in the world. They are tried by two magistrates, and from three to five freeholders. they have no indictments, but a plain statement of facts; and all the principles of law, except the technicalities, are as much observed as in other trials.

Mr. Hemphill offered the following, as a substitute for the 2d section of the report of the committee on General Provisions, under the head of slaves:

"The Legislature shall provide by law, for the punishment of offences committed by slaves; but they shall have no power to deprive them of an impartial trial."

Mr. *Van Zandt* said: I shall oppose the motion. I believe that humanity and every other consideration requires that we should secure to our slaves a proper trial. A simple provision in the Constitution, that they shall have an impartial trial, leaves it entirely open; and I believe we had better say nothing upon the subject at all. I believe that the only way to secure them an impartial trial is the ordinary course in the District Court. I have lately witnessed a case in my own county; six or seven slaves were accused of murder, and four of them were brought up for trial and convicted, and three were executed. I believe that the affect upon the negroes was fourfold greater than it would have been, if they had been taken up by the citizens and executed without going through the ordinary forms of trial. I believe this provision a good one; it is one which is in force at present in this country, and one which I hope will not be changed.

Mr. *Lipscomb* said: I view the subject in a different light from the gentleman from Harrison. I believe that by inserting this clause providing for a trial in the District Court, we shall not only endanger ourselves, but that kind of property. I have known a great many such trials in the District Court. The first law on the subject made in Alabama, granted the slaves the same trial as white persons in the District Courts. As witnesses, they are about the court house, and hear every thing that is going on, and some things calculated to raise inquiries which may disturb their peace and contentment in their condition. It is impossible for them to be told that they are equal to their masters there, without being led to inqnire why they are not equal every where else? These considerations induced a change in the law. I am not so familiar with the operation of the new law, not having been upon the bench since that time. But I believe it gives general satisfaction there, as it does in the other slave states. When we grant them an impartial trial, we do all that humanity can require. It is said they cannot have that, because they are helpless and belong to a different class from those who try them. But the interest of the master is a most powerful defence thrown around them. When a slave is tried for crime, his owner's interest is involved; and that owner will see that he has an impartial trial. The interest of all slaveholders is enlisted, that they shall not be condemned upon slight pretext. I believe slavery to be a permanent institution. I believe that it rests with ourselves to make it permanent. It is for the interest of the owner, and the happiness of the slave, that the latter should know his inferiority to the white man in every relation of life.

Mr. *Ochiltree* said: I hope, Mr. President, that the amendment offered by the gentleman from Washington will not be adopted. As the gentleman from Harrison says, I believe that humanity, policy, and the best interests of society demand that it should not be adopted. I think I see in the motion of the gentleman from Washington, the traces of early prejudices and habits of life. It is perhaps because it is a feature of the institutions of his native state, and from feelings connected with that chivalric little state, that he is induced to support this proposition. I think there are many reasons why it should not prevail. Whilst I would most watchfully guard against any interference whatever with this particular class of property, whilst I would snuff in the tainted breeze the most distant approach of such interference, whilst I would throw round our peculiar institutions all possible guards to protect them against malign influences, I yet hope and trust that we shall not forget that these creatures are human beings, that they are entitled at least to some of the common privileges of mankind, and that they should not be denied, when their lives are to pay the forfeit of crime, the privilege of being tried by a man learned in the law, and a jury not entirely made up of individuals prejudiced against them. I, sir, have witnessed this contemptible mockery of the trial of slaves before a magistrate: I have seen these unfortunate beings arraigned before men ignorant of the first principles of law, and the elementary rules governing trials; individuals greatly aggravated at the crimes alleged to have been committed by the negroes before them, and obstinately believing that the best interests of society demanded their immediate extermination. I have seen them condemned and hung, when I have thought them as innocent as they possibly could be of any crime on earth Who is there that does not recollect the dreadful scenes which were witnessed in the State of Mississippi some years ago, when hundreds were thus hastily tried and sent at once unanointed and unannealed into the presence of their Maker?

I have never seen the relations between master and slave in a better condition than in the State of Alabama. I have never seen elsewhere the distinction more marked, or a system more conducing to peace and quiet on the part of the slaves, and confidence and security in the white population. Under the Constitution of that State, the Legislature has assumed the authority to provide for the trial of slaves before the judges of the county counts and two associate justices, to which plan I would have no objection here, if we had a corresponding system of courts, six of the jury are required to be slaveholders. It was thought competent in the Legislature of Alabama to pass a law of this sort, and it will be competent in ours, if the provision which I prefer is adopted in this Constitution, to provide that slaves shall have the right of challenge, that they shall have the right of being tried by individuals who have not formed and expressed an opinion touching their guilt or innocence: that they shall not be tried for their lives by individuals who will take with them into the jury box all these prejudices to which so many are unfortunately subject with regard to this particular species of property. I appeal to my course upon this floor, to the observation of every one within the sound of my voice, to bear testimony to my strong and abiding desire to guard this class of property with the strictest vigilance. But I trust in God that this Constitution will guarantee them a fair trial when their lives are at stake, that they will not be denied the common privilege of being brought before a judge learned in the law, and a jury summoned by the sheriff of the county, with the right of challenge, who will solemnly sit upon their case and render a righteous verdict. This will have a most powerful effect upon the slave population at large. They will see that if they commit offences, impartial and rigorous justice will be meted out to them. But the most morbid and dangerous feelings only will be excited in their bosoms, if they are to go through the mere mockery of a trial before an incompetent magistrate and a prejudiced jury, upon a mere statement of facts; if they are to be hastily taken out and hung, in many instances without a show of guilt. I hope and trust the section will be allowed to remain as it is.

Mr. *Davis* said: Mr. President, If slaves are to be tried before the District Court in cases of insurrection, they never will be tried at all. Gentlemen say there is no danger that negroes will not have a *fair* and impartial trial. Now, sir, I have seen them tried; and I have never yet seen a negro put upon his trial, when his master has not stood behind his back, with his purse open, and employing the best lawyers in the country to defend him. Man will be governed by his interest. I think it may be left to the discretion of the Legislature to organize a court to try them. I do not think it proper or prudent that they should be tried by the District Judges. They may lie in jail 12 or 15 months before their trial can be had. I think an impartial trial can be had. It is the interest of the masters to give them a fair trial, and they will be governed by their interest in this matter. Why not say that an intelligent jury should be summoned; and I presume that the Legislature will make provision for such a jury, and if a District Judge cannot be obtained, and there is no county court, to have these trials before an intelligent justice of the peace. Learned counsel would be employed, and the trial would be as fairly conducted as that of the white man in the District Court. I say that it is the interest of the slaveholder to protect the slave, and it is the interest of the individual owner, unless in case of flagrant outrage, to have a slave acquitted; even if he is not disposed to keep *him*, he may send him off and sell him. If slaves are to lie in jail from term to term of the District Cour, the expense to the State of keeping them will be enormous. I think the Legislature should have the right to organize a proper court to give them a summary trial. I entertain the opinion confidently that they can have a fair and impartial trial under such a court as would be organized by the Legislature.

The ayes and noes were called on the amendment, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brown, Caldwell, Cuney, Davis, Gage, Hemphill, Hicks, Jewett, Lumpkin, Lusk, Lipscomb, M'Neill, Parker, Runnels, Scott, Tarrant, and White—21.

Noes—Messrs. Anderson, Bagby, Baylor, Brashear, Burroughs, Cazneau, Clark, Cunningham, Evans, Everts, Forbes, Henderson, Hogg, Horton, Howard, Holland, Hunter, Irion, Latimer of R. R., Lewis, M'Gowan, Moore, Navarro, Power, Rains, Smyth, Standefer, Ochiltree, Van Zandt, Wright and Young—31.

So the amendment was rejected.

Mr. *Runnels* offered, as a substitute to the section of the committee, the clause in the Alabama Constitution, under the head of slaves.

He said: It is founded in humanity. If there is not some summary mode of trial adopted, in the time of excitement the people will take the law into their own hands, and inflict death upon the innocent as well as the guilty. The Legislature will no doubt act with wisdom, and give the slave a fair and impartial trial, at the same time protecting the owner.

Mr. *Moore* said: We are told at this time by our friends in the United States, that the clause in our Constitution relating to slavery will be attacked when presented to the American Congress. How much better will it be to adopt one that has been adopted by that Congress—one which has passed the ordeal! I believe we cannot select one more perfect than this, which has been fully tried and found beneficial.

Mr. *Lusk* offered the following proviso:

"Provided the Legislature shall not have the power to authorize any person to emancipate their slaves, unless they send them out of the State."

He said: If they are emancipated, I want to send them to some other country, to Africa or elsewhere. I am opposed to having free negroes here. If we have abolitionists among us, as has been frequently suggested upon this floor, by the assistance of those in the north, they may pay the money and buy up the slaves of a whole county, turning them loose upon society. I shall vote against the whole section, unless it embraces some provision of this kind.

Mr. *Runnels* said he would accept the proviso.

Mr. *Van Zandt* said, if accepted, he should wish the whole section rejected.

Mr. *Runnels* said, he would not accept it, but let the question be taken.

The proviso was rejected; and the substitute offered by Mr. Runnels was adopted.

Mr. Van Zandt moved to substitute the 2d section offered by Mr. Runnels, by adopting the 2d section of the report of the committee on General Provisions, in lieu thereof.

Mr. *Runnels* said: I hope the motion will not prevail. I will assure the gentleman, and those who think with him, that if they adopt the mode they seem disposed to adopt, it will produce a state of things injurious to the State as well as the owner, under high excitement, many innocent beings will be punished.

Mr. *Van Zandt* said: I have seen cases, for I was raised in a slave country, where slaves have been arrested upon a slight rumor—convicted upon testimony which would not have been sufficient in the case of a white man, and executed. Every one knows how easy it is to get up these reports against slaves. Although we have provided that various courts may be established, we do not know whether the Legislature will establish even county courts. They may adopt a system by which every planter may have half his slaves swept off. In cases of murder and arson, at least, slaves ought to be entitled, for the benefit of the slave holder himself, to a fair trial in the District Court. I call for the ayes and noes.

Mr. *Hemphill* said: I do not see the necessity of a trial in the District Court, that negroes may be fairly tried who may be charged with murder or arson. If such a provision is made, they will never be taken before the District Court, but they will be hung before they get there. In the county of Washington, a negro was lately hung without a trial. I venture to say that if a negro should be taken up for burning down a house to night, he never would be tried before the District Court; he would be hung before sunset to-morrow. Whereas, if a tribunal were established for a summary trial, he would have the benefit a trial, and perhaps would be able to prove to the satisfaction of the court and jury that he is not guilty. In this country, where we have no jails, we have never been able to secure a proper administration of criminal justice, even where white persons are committed; much less shall we be able to do so, if all slaves accused of crime are obliged to be kept in jail at the expense of the county or state. I desire that justice shall be properly administered to slaves; but there are a great many difficulties, and I am not perfectly clear in my own opinion as to the best method. I think, however, that the clause from the Alabama constitution sufficiently provides for this matter, leaving it to the Legislature to provide the court.

The ayes and noes were then called, and stood as follows:

Ayes—Messrs. Bagby, Baylor, Burroughs, Caldwell, Clark, Darnell, Evans, Everts, Forbes, Gage, Henderson, Hogg, Horton, Holland, Hunter, Irion, Latimer of R R, McGowan, Rains, Standefer, Ochiltree, Van Zandt and Young—23.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brashear, Brown, Cazneau, Cuney, Davis, Hemphill, Hicks, Howard, Jewett, Lewis, Lumpkin, Lusk, Lipscomb, M'Neil, Moore, Navarro, Parker, Power, Runnels, Scott, Smyth, Tarrant, White and Wright —28.

So the motion was lost; and the section as offered by Mr. Runnels, was adopted.

The article reported by Mr. Davis, from the select committee, in relation to the Land Office, was taken up.

Mr. Van Zandt moved to strike out the words "as to make it support itself, without becoming a charge to the state, and shall."

Which motion was carried, and the words stricken out.

Mr. Moore moved to strike out "four" and "six," and insert "three."

Mr. *Davis* said: Were it not for the convenience of the people, I would care nothing about this provision now. But it is absolutely necessary for the convenience of the people of this State that there should be at least four land offices, The majority of the committee were in favor of from four to six until the year 1850. The year 1850 was put in with a view to the territory of Santa Fe. I hope no amendment will be made; but that the convention will reconsider and adopt the whole section.

Mr. *Caldwell* said: I hope the convention will have some mercy uppon the people of Texas. I think it hard that I myself should be taxed to pay for making title deeds to other people. I have never received one which I have not had to pay for Why all others should not be taxed as well, I cannot see. I do hope it will be made as light as possible. I am glad there is not to be a land office in every county; two are as much as we can possibly bear—I am satisfied they will create an immense expense.

Mr. *Love* said: this is a matter in which I feel a great deal of interest, as I believe that the rights and interests of the people are connected with it beyond any other subject before us. Whilst I am willing to do every thing that is necessary for the convenience of the people, I wish to move in this matter with a great deal of care. I have visited the Land Office, and conversed with the commissioner, and was pleased to find every thing in good condition. I think that every gentleman who will go there, will see the impossibility of any great subdivision in the Land Office. To give time for reflection upon the subject, I will move to adjourn.

On motion of Mr. Love, the Convention adjourned until 8 o'clock to morrow morning.

Saturday, Aug. 9th, 1845,
Half past 8 o'clock, A. M.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Ochiltree offered the following resolution:

Resolved, That the judiciary committee be instructed to examine Decree No. 308, of the laws of Coahuila and Texas, by which S. M. Williams, as empresario, is authorized to create a bank, to be called "The Commercial and Agricultural Bank;" and to report to this Convention whether, in their opinion, unless prevented by a constitutional restriction, the said Bank will be authorized to be established.

On motion of Mr. Young, the rule was suspended, and the resolution adopted.

Mr. Armstrong of R., moved to re-consider the vote adopting the clause under the head of slaves; which motion was laid on the table.

On motion of Mr. Hemphill, the report of the judiciary committee, made on yesterday, on the subject of forfeitures, was taken up.

Mr. Cunningham moved to lay it on the table.
Lost.
Mr. Van Zandt moved to lay it on the table until Monday next.
Lost.

The ayes and noes were then called on the adoption of the report and stood as follows:

Ayes—Messrs. President, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Darnell, Davis, Everts, Forbes, Hemphill, Henderson Hicks, Hogg, Horton, Howard, Irion, Jones, Kinney, Love, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Power, Rains, Runnels, Scott, Smyth, Standifer, Tarrant and Ochiltree. —37.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Bagby, Clark, Cunningham, Evans, Gage, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R, Lewis, Lumpkin, Parker, Van Zandt, White, Wright and Young—20.

So the report was adopted.

The report of the judiciary committee on the subject of marriages made on yesterday, was taken up.

The ayes and noes being called, upon the adoption of said report, stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, M'Neil, Miller, Moore, Navarro, Parker, Power, Runnels, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree, Van Zandt, White and Young—52.

Noes—Messrs. Brown, Evans, Hunter and Lewis—4.

So the report was adopted.

The report of the judiciary committee, made on yesterday, in relation to the establishment of a chancery court, was taken up and adopted.

On motion of Mr. Gage, the additional section offered by himself, to come in as the 28th section of the general provisions, was taken up.

Mr. Howard moved to amend, after the words "legislature shall," by inserting the words "to have power to provide."

Which was adopted.

Mr. Parker moved to strike out the word "fifty."

Lost.

The question was then taken on the section offered by Mr. Gage, as amended.

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs. President, Armstrong of R., Bache, Brashear, Cazneau, Darnell, Davis, Evans, Gage, Henderson, Hogg, Holland, Howard, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R. Lewis, Love, Lusk, Lipscomb, Navarro, Parker, Power, Rains, Standifer and Ochiltree—29.

Noes—Messrs. Anderson, Armstrong of J., Bagby, Baylor, Brown Burroughs, Caldwell, Clark, Cunningham, Everts, Forbes, Hemphill, Hicks, Horton, Lumpkin, Mayfield, M'Gowan, M'Neil, Miller, Moore, Scott, Smyth, Tarrant, Van Zandt, White and Young—26.

So the additional section was adopted.

On motion of Mr. Jewett, the Convention took up the

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The report of the special committee, Mr. Davis chairman, in relation to the land office, being first in order, was taken up; and, On motion of Mr. Lusk, the article reported by said special committee, was laid on the table.

On motion of Mr. Jewett, his motion (made on yesterday) to reconsider the vote adopting the section of the general provisions, as offered by Mr. Runnels, to provide by law for the compensation of all officers, agents, &c.; and to prohibit them from granting extra compensation to officers, &c., was taken up and reconsidered; and,

On motion of Mr. Jewett, referred to the committee on the Legislative Department.

Mr. Scott offered the following amendment, to come in at the end of the clause on slaves:

"The foregoing clauses concerning slavery, shall not apply to that portion of territory lying north of thirty-six degrees and thirty minutes, north latitude; but therein slavery, or involuntary servitude, except for crime, is hereby prohibited."

Mr. *Runnels* said: If I could see that any difficulty could arise under the clauses referred to, I should certainly vote for the gentleman's amendment. But I can see none whatever. It was not contemplated by the Congress of the U. States, that we, in the adoption of a State Constitution under the provisions of their resolution, should make one portion of the State slave holding and another non-slave holding. In the formation of a State government in that territory slavery will be prohibited, but until it is attempted to form a State government there, these clauses in the constitution have no bearing, and can present no difficulty. It would be to me an anomaly in State governments to provide that one portion of a State should be non slave holding and the other slave-holding. This would be totally unnecessary in my opinion, it would be an extraordinary course on our part to conciliate the abolitionists of the North, unjustifiable and inconsistent with a proper self-respect.

On motion of Mr. Moore, the amendment was referred to the committee on the judiciary.

On motion of Mr. Hemphill, the report of the committee on general provisions was laid on the table for the present; and,

On motion of Mr. Hemphill, the resolution offered by himself on the 30th July, providing that no provision of this constitution shall be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from any of the immunities and privileges to which he is entitled under the constitution of the United States, was taken up and referred to the committee on the judiciary.

On motion of Mr. Davis, the report of the committee on general provisions was again taken up.

The 1st section of the schedule was read by the secretary.

On motion of Mr. Rusk, the schedule was laid on the table.

On motion of Mr. Van Zandt, the 18th section of the general provisions was referred to the committee on the judiciary.

On motion of Mr. Van Zandt, the secretary was required to make out a fair copy of the general provisions, with the amendments—except such portions as are laid on the table, and referred to committees.

Mr. Love moved to adjourn until Monday morning, 8 o'clock. Lost.

Mr. Ochiltree offered the following resolution:

Resolved, That a committee of nine persons be appointed by the President, whose duty it shall be, carefully to supervise the several reports which have been adopted by the convention, to compare them—correct ungrammatical expressions, without altering the sense, and report them to the convention at the earliest day practicable.

Which was laid on the table one day for consideration.

On motion of Mr. Anderson, the preamble to the constitution was taken up; and,

On motion of Mr. Howard, the same was laid on the table.

Mr. Hemphill, chairman of the committee on the judiciary, to whom was referred the article of the constitution in relation to the judicial powers of the State, reported the same back to the convention, with sundry amendments and additional sections; and,

On motion of Mr. Cazneau, the report of the committee was taken up.

The Secretary then read the amendments, as offered by the committee.

1st. To the 5th section add the following: "and they shall hold their offices for six years."
Adopted.

2d. Strike out the 6th and 7th sections.
Adopted.

3d. In the 13th section, strike out between the words "legislative" and "shall be," and insert "and who."
Adopted.

4th. In 17th section, between the words "and" and "over," in the line next to the last, insert the following: "original jurisdiction and general control."

Mr. *Howard* said he would move to strike out the word "original," for this reason: that as it stood, we should have two Probate Courts, and parties might take out administration either in the Probate Court or the District Court. He was willing to say that a right of review of Probate proceedings shall exist in the District Court, but was unwilling to give that court original jurisdiction. It occurred to him that this was establishing an inconvenient rule. If it was expedient to say that the District Court shall have exclusive control of this subject, he was willing to give it to that court. But he was unwilling to create two courts with the same jurisdiction.

Mr. Howard moved to re-commit the amendments to the committee. Lost.

Mr. Howard offered the following amendment to the 4th amendment of the committee: "Provided that the original jurisdiction hereby conferred on the District Court shall not be so construed, as to authorize the District Judge to grant letters of administration."

Rejected.

The 4th amendment of the committee was then adopted.

Mr. Lipscomb offered the following amendment.

Add, to the 17th section, "under such regulations as shall be prescribed by law." Adopted.

5th amendment, additional section—

"In the trial of all causes in equity in the District Court, the plaintiff or defendant shall, upon application made in open court have the right of trial by jury—to be governed by the rules and regulations prescribed in trials at law."

Which additional section was adopted by the Convention.

6th amendment, additional section, as follows:

"In all cases arising out of contract, before any inferior judicial tribunal, where the amount in controversy shall exceed ———— dollars, the plaintiff or defendant shall, upon application to the presiding officer, have the right of trial by jury."

On motion of Mr. Ochiltree, the blank was filled with "ten, and the section adopted.

7th amendment, additional section, as follows:

"In all cases, where justices of the peace, or other judicial officers of inferior tribunals, shall have jurisdiction in the trial of causes, where the penalty for the violation of a law is fine or imprisonment, [except in cases of contempt] the accused shall have the right of trial by jury."

Which was adopted by the Convention.

Mr. Young offered the following, as a substitute for the 5th section:

"The Judges of the Supreme and District Courts shall be elected by joint vote of both Houses of the Legislature, and shall hold their offices for six years."

The chair decided, that amendments might be made to the report of the committee on the judiciary; from which opinion Mr. Howard appealed.

On motion of Mr. Hemphill, the Convention adjourned until half-past 8 o'clock, Monday morning.

Monday morning, August 11, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

On motion of Mr. Gage, Mr. Howard was excused from attendance on the Convention, in consequence of sickness.

Mr. Hunter moved to re-consider the vote adopting the additional section offered by Mr. Gage, exempting two hundred and fifty dollars worth of household property from taxation.

Mr. Hunter moved to lay the motion on the table. Lost; and vote re-considered.

The ayes and noes being called, on the adoption of the section, stood thus:

Ayes—Messrs. President, Armstrong of R , Bache, Brashear, Cazneau, Cuney, Darnell, Davis, Evans, Gage, Henderson, Hogg, Holland, Irion, Jewett, Jones, Kinney, Latimer of L., Lewis, Love, Lipscomb, Navarro, Parker, Power, Rains, Runnels, Standefer and Ochiltree—28.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bagby, Caldwell, Clark, Cunningham, Everts, Forbes, Hicks, Horton, Hunter, Latimer of R. R., Lusk, McGowan, McNeill, Miller, Moore, Scott, Smyth, Tarrant, Van Zandt, White, Wright and Young—26.

So the section was adopted.

On motion of Mr. Parker, the Convention took up the

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The appeal of Mr. Howard, from the decision of the chair, deciding that amendments could be made to the report of the judiciary committee before the same had been engrossed, being before the Convention, was taken up, and the chair was sustained.

Mr. Young's substitute for the 5th section of the report of the judiciary committe, providing for the election of Judges of the Supreme and District Courts by joint vote of both Houses of the Legislature, being before the House.

Mr. Davis called for a division of the question.

The question on striking out the original section was taken; upon which

The ayes and noes were called, and stood as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Cuney, Darnell, Davis, Evans, Gage, Hemphill, Holland, Hunter, Jewett, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, McNeill, Scott, Smyth, Wright and Young—23.

Noes—Messrs. President, Baylor, Bache, Brashear, Brown, Caldwell, Clark, Cunningham, Everts, Forbes, Henderson, Hicks, Hogg, Horton, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standefer, Tarrant, Ochiltree, Van Zandt and White—34.

So the Convention refused to strike out.

Mr. Mayfield moved to amend the substitute offered by Mr. Young, by striking out the words "by the Legislature," and insert "by the people."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Bache, Brown, Clark, Cuney, Evans, Hicks, Hogg, Holland, Lewis, Love, Lumpkin, Lipscomb, McNeill, Parker, Power, Rains, Standefer, Tarrant and Ochiltree—19.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Brashear, Caldwell, Cazneau, Cunningham, Darnell. Davis, Everts, Forbes, Gage. Hemphill, Henderson, Horton, Hunter, Irion, Jewett, Jones, Kinney. Latimer of L., Latimer of R R. Lusk, Mayfield, McGowan, Miller, Moore, Navarro, Runnels, Scott, Smyth, Van Zandt, White, Wright and Young—38.

Lost.

The question was then taken on Mr. Young's substitiute, and rejected by ayes and noes, as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Clark, Cunningham, Darnell, Davis. Evans, Gage, Hemphill, Holland, Hunter, Jewett, Latimer of L, Latimer of R. R., Lewis, Lusk, McGowan, McNeill, Smyth, Van Zandt, Wright and Young—24.

Noes—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Cunningham, Everts, Forbes, Henderson, Hicks, Hogg, Horton, Irion, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Scott, Standefer, Tarrant, Ochiltree and White—33.

Mr. Darnell moved to strike out the words "by the Senate," and insert "two thirds of both Houses of the Legislature," in 5th section.

Lost.

Mr. McNeill offered the following substitute for the 5th section:

" The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their offices for six years. The Judges of the District Court shall be elected by the qualified electors of their respective districts, and shall hold their offices for four years.

Rejected.

Mr. Forbes offered the following amendment:

Add, to the 5th section, " and upon the expiration of their regular term, or the unexpired portion of any regular term, for which any Supreme or District Judge shall have been elected, the same shall be renominated by the Governor—subject to the approval by the Senate, as in the first instance of his nomination."

On motion of Mr. Gage, the word " shall," before the words " be renominated," was stricken out, and the word " may" inserted.

Mr. Ochiltree moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the 5th section, the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Everts, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Jones, Kinney, Love, Lumpkin, Lipscomb, Mayfield, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Standefer, Tarrant, Ochiltree and White—31.

Noes—Messrs. Armstrong of J., Armstrong of R., Bagby, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Gage, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R, Lewis, Lusk, McGowan, McNeill, Scott, Smyth, Van Zandt and Young—25.

So the section was adopted.

Section 1st adopted.

Mr. Lipscomb offered the following substitute for the 2d section:

" The Supreme Court shall consist of three Judges, who shall choose the presiding officer: and two, however, shall form a quorum to do business.

Rejected.

Mr. Caldwell offered the following amendment to the 2d section:

"Strike out all after associates, in 2d line, and insert the following: "until such time as the Legislature may deem it expedient to increase the same to three associates, a majority of whom shall, at any time, form a quorum." Lost.

Mr. Evans offered the following substitute for the 2d section:

"The Supreme Court shall consist of two Judges, until the Legislature may increase its number to four."

Rejected.

The section was then adopted.

Mr. Scott offered the following substitute for the 3d section:

"The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, in such cases, and under such rules and regulations as shall be prescribed by law: and said court, and the judges thereof shall have the power to issue writs of *habeas corpus*, and such other remedial and original writs as may be necessary to give it a general superintendance and control over the District Courts; and shall hold its sessions at such times and places as the Legislature may prescribe.

Rejected.

Mr. Armstrong of J., moved to amend after quo warranto," by inserting the words "prohibition and certiorari." Lost.

Mr. Love offered the following amendment to the 3d section: Add, "provided the original jurisdiction and control shall only extend to enforcing its own judgments, and compelling the District Judges to proceed to the trial and judgment in a case."

Mr. *Love* said: I see a provision in the section to which I have a great objection. It is that clause which gives the appellate court a general superintendence and control over all the acts of the district courts. I am opposed myself to the principle of permitting the appellate court to take from the district courts any question which may be depending there upon the application of a lawyer, and staying all proceeding until the case has been investigated in the supreme court. Any lawyer can make out a plausible showing for this purpose. It is the nature of power to be accumulative. In my opinion, the best remedy is the usual power of appeal or writ of error, not arresting the proceeding. I am told that there is a provision of this sort in the Constitution of Alabama; and if so, I will venture to say that it is not in that of any other state in America. It seems to me very improper for the supreme court to exercise general superintendance and control over the district courts, except by way of appeal or writ of error. It will create dissension, and increase litigation.

Mr. President *Rusk* said: I shall vote against the amendment. I will agree with the gentleman from Galveston that power is accumulative. But the question is, which is the more dangerous, to trust one man with it, or three? I think this is power which ought to belong to the supreme court. I recollect that one of the first cases which came before the supreme court, while I had the honor of being a member of that body, was one of extreme hardship, arising from the action of the district judge in the court below, and one which we could not entertain, because we had only appellate jurisdiction, and the court below kept the case under advisement without giving a final decision. If the amendment prevail, such a case cannot be taken away until a final decision in the court below. The judge may then go on and make one interlocutory decision after another, until one of the parties in interest may die, without making a final decision in the case.

The amendment was adopted.

Mr. *Rusk* said he should move a re-consideration, in order to record his vote against it.

Mr. *Mayfield* said: Notwithstanding my feeble health, I will make a few remarks. I am inclined to think that the amendment offered by the gentleman from Galveston ought not to prevail. It does not follow, because power may be abused, that those should not be vested with it, who are charged with the administration of the laws of the land. The evils which have been depicted may certainly arise. A cunning and imperious lawyer may impose upon the supreme court; but I do not think it a probable case, if that court is selected for talents, wisdom, and integrity. I say, then, let us make use of general terms, and give that court the power to exercise a wholesome control over the other courts of the country. The district court in many instances may proceed improperly, may enter interlocutory judgments, and refuse as remarked to sign a judgment at all; and there would be no redress unless we clothe the court with just such a power as contemplated in the section as it originally stood. I am satisfied that our supreme court will always look to the true interest of the country, and the credit of the bench itself. I hope therefore that the vote adopting the amendment will be re-considered.

On motion of Mr. Runnels, the vote just taken on the adoption of Mr. Love's amendment, was re-considered, by ayes and noes, as follows:

Ayes—Messrs President, Armstrong of J., Armstrong of R., Bagby, Bache, Brashear, Caldwell, Clark, Cunningham, Cuney, Darnell, Davis, Gage, Henderson, Hicks, Horton, Holland, Jewett, Mayfield, Moore, Navarro, Rains, Runnels, Scott, Smyth, Tarrant and Van Zandt—27.

Noes—Messrs. Anderson, Baylor, Brown, Evans, Everts, Forbes, Hemphill. Hogg, Hunter, Irion, Latimer of L, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Standefer, Ochiltree, White and Young—24.

The ayes and noes being called, on the adoption of the amendment, stood as follows:

Ayes—Messrs Anderson, Bagby, Baylor, Brown. Cazneau, Cuney, Evans, Everts, Forbes, Hemphill, Hogg, Hunter, Irion. Latimer of L, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan. McNeil, Miller, Parker. Runnels, Standeter, Tarrant, Ochiltree, White and Young—29.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bache, Brashear, Caldwell, Clark, Darnell, Davis, Gage, Henderson, Hicks, Horton, Holland. Jewett, Mayfield, Moore, Navarro, Rains, Scott, Smyth and Van Zandt—23.

So the amendment was adopted.

Mr. Hemphill offered the following amendment:

In 9th line, 3d section, after the words "district courts," insert "and appeals may be taken from interlocutory judgments, under such rules and regulations as may be prescribed by law, and the supreme courts."

Adopted; and the section as amended was adopted.

Section 8th adopted.

Mr. Smyth offered the following, as a substitute for the 9th section:

"The judges of the supreme and district courts shall receive a compensation for their services, which shall neither be increased nor diminished during their continuance in office. The first judges of the supreme court, appointed under this Constitution, shall receive two thousand dollars annually; and the first judges of the district court shall receive fifteen hundred dollars, annually."

Mr. Van Zandt moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question, the adoption of the 9th section, was put and carried.

Section 10th adopted.

Mr. Standefer offered the following as an additional section:

"The Legislature shall not have power to increase or diminish the salary of the Governor, or judges, for ten years from the adoption of this Constitution by the people."

Which was, on motion of Mr. Rusk, laid on the table.

Section 11th adopted.

On motion of Mr. Hemphill, the report was laid on the table for the present.

The committee on the judiciary made the following report:

Committee Room, Aug. 11th, 1845.

To the Hon. THOMAS J. RUSK,

President of the Convention:

The committee on the judiciary, to whom was referred a resolution exempting that portion of the territory of Texas lying north of 36 degrees 30 minutes north latitude, from the operation of the clauses in the Constitution relating to slavery, and prohibiting, within that portion of our limits, slavery or involuntary servitude, except for crimes; also, a resolution declaring that no provision of the Constitution should be so construed as to authorize the passage of any law, by which a citizen of either of the states of the Union shall be excluded from the enjoyment of any of the immunities and privileges to which he is entitled, under the Constitution of the United States, have had the same under consideration, and have instructed me to report, and respectfully recommend for adoption the following amendment of the 3d section of the schedule, as reported by the committee on General Provisions of the Constitution, viz: beteen the words "repugnant" and "to," in the 2d line, insert "to the Constitution of the United States, the joint resolution for annexing Texas to the United States, or."

This amendment, it is believed, will accomplish every beneficial purpose which could be obtained by the adoption of the resolutions referred for our consideration.

JOHN HEMPHILL,
Chairman.

Which report was laid on the table, to come up among the orders of the day.

On motion of Mr. Moore, the report of the committee on the judicial department was taken up.

In 12th section, Mr. Armstrong of J, moved to strike out the word "amount," and insert "value."

Carried.

Mr. Jewett offered the following amendment to the 12th section:

Strike out all down to "interest," inclusive, and insert "the district courts shall have original jurisdiction of all criminal cases, of all suits in behalf of the State, to recover penalties, forfeitures and escheats; and of all cases of divorce; and of all suits, complaints, and pleas, whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at, or amount to one hundred dollars, exclusive of interest."

Adopted; and the section as amended adopted.

Section 13th adopted.

In section 14th, Mr. Hemphill moved to fill first blank with "three years." Lost; and, on motion of Mr. Van Zandt, the blank was filled with "two years."

On motion of Mr. Van Zandt, the second blank was filled with "two years."

Mr. Davis offered the following substitute for the 14th section:

"The Legislature shall elect, by joint vote of both houses, one Attorney-General for the State, and one District Attorney for each Judicial District, who shall hold their offices for the term of two years; and should a vacancy occur, it shall be filled by the governor until the end of the next session of the Legislature; and their duties, salaries and perquisites shall be proscribed by law."

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Armstrong of J., Baylor, Bagby, Brown, Cazneau, Clark, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Jewett, Kinney, Latimer of R. R., Lewis, Lipscomb, McNeill, Moore, Navarro, Runnels, Standefer and Young—26.

Noes—Messrs. Anderson, Armstrong of R., Bache, Brashear, Caldwell, Cunningham, Cuney, Evans, Everts, Forbes, Henderson, Hicks, Irion, Jones, Latimer of L., Love, Lumpkin, Lusk, Mayfield, M'Gowan, Parker, Rains, Scott, Smyth, Tarrant, Ochiltree, Van Zandt and White—28.

So the substitute was rejected.

Mr. Lewis offered the following amendment to the 14th section: "and there shall be elected by joint vote of both houses of the Legislature, one district attorney."

Mr. Anderson offered the following, as a substitute for Mr. Lewis's amendment: and there shall be a district attorney for each district, who shall be elected by the qualified voters thereof."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R,, Bache, Brashear, Brown, Caldwell, Clark, Cuney, Evans, Everts, Forbes, Hogg, Holland, Jewett, Latimer of L, Mayfield, McGowan, Parker, Rains, Standefer, Tarrant, Ochiltree, Van Zandt and Young—24.

Noes—Messrs. President, Armstrong of J., Bagby, Baylor, Cazneau, Cunningham, Darnell, Davis, Gage, Hemphill, Henderson, Hicks, Horton, Hunter, Irion, Jones, Kinney, Latimer of R. R, Lewis, Love, Lumpkin, Lusk, Lipscomb, McNeill, Miller, Moore, Navarro, Runnels, Scott, Smyth and White—31.

So the substitute was rejected.

Mr. Rusk offered the following, as a substitute for Mr. Lewis's amendment and the entire section, which was accepted by Mr. Lewis.

"There shall be appointed by the Governor, by and with the advice of two-thirds of the Senate, one attorney general, who shall discharge the duties of district attorney for the district in which the seat of government may be situated. There shall be elected by joint vote of both houses of the Legislature, a district attorney for each of the other districts, who shall hold their offices for two years, whose salaries and duties shall be prescribed by law."

Mr. Van Zandt moved to strike out that portion of the substitute which makes the attorney general the district attorney, in the district in which the seat of government is situated.

Mr. Anderson moved the previous question.

The question—shall the main question be now taken? was put and carried.

Mr. Lusk moved the re-consideration of the vote adopting the 14th section.

Upon which the ayes and noes were called and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor' Caldwell, Clark, Cazneau, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Irion, Jewett, Latimer of R. R., Lewis, Love' Lusk, Lipscomb, M'Neill, Miller, Parker, Runnels, Scott, Standefer' Tarrant and Ochiltree—30.

Noes—Messrs. Anderson, Bagby, Bache, Brashear, Brown, Cunningham, Cuney, Evans, Everts, Forbes, Henderson, Hicks, Jones, Kinney, Latimer of L., Lumpkin, Mayfield, Moore, Navarro, Rains, Smyth, Van Zandt, Wright and Young—24.

So the vote was reconsidered.

The ayes and noes being then called, on the adoption of the 14th section, stood thus:

Ayes—Messrs. Anderson, Bagby, Bache, Brown, Caldwell, Cunningham, Evans, Everts, Forbes, Henderson, Hicks, Jones, Latimer of L., Lumpkin, Lusk, Mayfield, Navarro, Parker, Rains, Smyth, Van Zandt and White—22.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Brashear, Cazneau, Clark, Cuney, Darnell, Davis, Gage, Hemphill, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R, Lewis, Love, Lipscomb, McNeill, Miller, Moore, Runnels, Scott, Standefer, Tarrant, Ochiltree and Young—32.

Lost, and section rejected by refusing to adopt.

Mr. Rusk offered as an additional section, to come in as the 14th section, the substitute offered by himself to Mr. Lewis's amendment, which had been cut off by the previous question.

Mr. Hemphill offered the following, as a substitute for the additional section offered by Mr. Rusk.

"The governor shall nominate and, by and with the advice and consent of the Senate, appoint an attorney general, who shall hold his office for two years; and there shall be elected, by joint vote of both houses of the Legislature, a district attorney for each judicial district, who shall hold their offices for two years; and the duties, salaries and perquisites of the Attorney General and District Attorneys, shall be prescribed by law." Adopted.

Mr. Rusk moved, that portion of the section which relates to attorney general be stricken out. Lost, and the section adopted.

On motion of Mr. Runnels, the Convention adjourned until 4 o'clock P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—quorum present.

The 15th, 16th and 17th sections of the Judiciary Report were adopted.

Mr. Evans offered the following, as an additional section, to come in after the 15th section:

"Justices of the peace shall have such civil and criminal jurisdiction, as shall be provided for by law."

Adopted.

Mr. Evans offered the following, as an additional section:

"The Legislature shall have power to vest in clerks of courts, authority to grant such orders, and do such acts as may be deemed necessary, for the furtherance of the administration of justice; and in all cases, the powers thus granted shall be specified and determined."

Rejected.

The report of the Committee on the Judicial department of the government was ordered to be engrossed.

On motion of Mr. Anderson, such reports as have been ordered to be engrossed, were referred to the Committee on Printing, with instructions to have printed a sufficient number for the use of the members.

On motion of Mr. Jewett, the 21st section of the General Provisions was made the special order of the day for to-morrow.

On motion of Mr. Bagby, the report on the Legislative department was taken up; and,

On motion of Mr. Young, it was laid on the table for the present.

The resolution offered by Mr. Ochiltree, on the 9th instant, providing for the appointment of a Committee to supervise the several reports, &c. was taken up and adopted.

The resolution offered by Mr. Davis, on the 11th instant, authorizing the appointment of a committee to prepare an ordinance for the change of the present form of government for a State government, was taken up, and laid on the table.

The resolution offered by Mr. Burroughs, on the 28th ult., to regulate the proceedings of the Convention, was taken up, and laid on the table.

On motion of Mr. Davis, the report on the Legislative Department was again taken up.

Mr. Everts offered the following as a substitute for the first section:

"Every free male person, who shall be a *bona fide* inhabitant of Texas, at the time of the adoption of this Constitution by the Congress of the United States, and who shall have attained the age of 21 years, (Indians, Africans, and the descendants of Africans, excepted) shall be deemed a qualified elector; and thereafter, all free male persons who shall be citizens of the United States, and who have resided in this State one year next preceding the day of election, and who shall have attained the age of twenty-one years, (Indians, Africans and the descendants of Africans excepted) shall be entitled to vote in the county in which they shall reside; *provided* that no officer, soldier, or marine, in the service of the United States, shall be eligible to a vote."

Mr. Davis moved to amend, by restricting Indians from the privilege of voting until the 4th generation.

Rejected.

Mr. Davis then moved to restrict Indians and their descendants from voting, until the Legislature authorize it by enactment.

Mr. *Horton* said: If this amendment is adopted a great many individuals in this country will be placed in a situation by no means pleasant. I know a number of highly respectable people who have some Indian blood in their veins. They are intelligent men, and qualified to exercise all the privileges granted to them by the laws and the Constitution. I think if we go to defining the rights of individuals according to their blood, we shall require a tribunal to judge of these matters. The first section requires that a particular individual shall have resided so many months in the county or town, before he shall be entitled to the privileges of a qualified elector. That would exclude Indians, who are travelling about. Those who are so far civilized as to be engaged in agricultural pursuits, who are worthy citizens, pay taxes, and do military duty, should I think be entitled to vote as well as any.

Mr. *Davis's* amendment was lost.

Mr. *Everts* said: The original bill provides that every free white male person who shall be a citizen of the United States, or who is, at the time of the adoption of this Constitution, a citizen of the now Republic of Texas, and shall have resided in this State one year next preceding an election, and the last six months within the county. city, or town in which he offers to vote (Indians not taxed, Africans and descendants of Africans excepted) shall be deemed a qualified elector. Now there are a great many persons, and will be at the time this Constitution is approved by the Congress of the United States, who will not be citizens of the Republic of Texas. All those persons who shall arrive in the country after this time, and do not take the oath of allegiance to the Republic of Texas, will be excluded by this provision of this bill. The substitute proposes that all persons who are *bona fide* inhabitants of Texas, at the time of the adoption of the Constitution, without regard to the time they have resided in the Republic, shall be deemed qualified electors. There will no doubt be a great number who ought really to be allowed to vote at the first election after the adoption of the Constitution by the Congress of the United States, who will have resided in the Republic six months, and at the same time have not taken the oath of allegiance. It seems to be a mere matter of form to require them to take the oath of allegiance to a government which they do not expect to support very long at any rate. This proposes extending the elective franchise to as great an extent as any one could wish, and it seems to me that we ought to go thus far. We ought to include all free persons who are *bona fide* inhabitants of Texas at the time of our adoption, whether citizens of the United States or citizens of Texas. The doctrine that a person must be a citizen of the United States before he can be qualified to vote at a State election, is apparently not true. A sovereign State has the right to permit any person to vote, whether a citizen of the United States or not; and it would be entirely competent for the Legislature of Texas to provide that all inhabitants, no matter how long they have lived in the State, shall have the right to vote; and there is no power to gainsay that authority, notwithstanding the naturalization laws of the United States. Now, I am not by any means an advocate of permitting persons to vote who are not citizens of the United States, nor would I wish to place such a clause in this Constitution. As I recollect, it was a matter of very great complaint in the State of Illinois, in the year 1840, that great numbers of wild Irish, as they were called, were imported from Montreal and elsewhere, directly before the Presidential election came on, and in the fall, having resided in the State six months, they voted. To test the question, some of them were indicted; for they have a law there punishing those who attempt to vote without being entitled. The courts decided that they were entitled to vote. The State of Michigan has just such a clause in her Constitution, which has passed the ordeal and met the approval of the Congress of the United States. I allude to these authorities to show that it is competent for any State to declare the qualifications of an elector without regard to the naturalization laws of the United States. Those laws were passed for another and a different purpose from that of giving qualifications to an elector. The States have never conceded that right to the United States, and it has never been infringed by the Federal Government. This very question came up in the Senate of the United States in 1836, when the Michigan Constitution was before that body. It was discussed elaborately and the point was yielded, that the State had the right to declare the qualifications of electors without regard to the naturalization laws. Then the substitute goes only so far as to give to all free inhabitants who shall be here at the time of the adoption of this Constitution by the Congress of the United States, the rights of qualified electors. After that time I think a different rule should be adopted. I have seen the difficulties which have arisen in Michigan and Illinois, and I do not by any means advocate the introduction of foreigners into the country, either for the purpose of voting, or for that of making canals or railroads, or any thing else, without being first acquainted with our institutions, and taking the oath of allegiance. But in this particular instance, we might disfranchise a great number of persons in the Republic of Texas, who ought under the circumstances, as I think, to have a vote. My own opinion is this, that all persons who are inhabitants of Texas, by the terms of annexation, when that compact shall be completed, and annexation shall have taken place, will *ipso facto* become citizens of the United States; and that those persons now citizens of the Republic of Texas, who never were citizens of the United States, will not have to undergo the term of five years. I differ from some gentlemen upon that subject; but the question, whether my views are right or wrong, is not necessarily involved in this substitute.

Mr. *Powers* said: I heard with some degree of surprise the remarks which dropped from the lips of the gentleman last up, with regard to my countrymen. I should like to know, sir, where he caught the "wild Irish," of whom he speaks. I am an Irishman myself; and I must say that I think these remarks of the gentleman out of place, uncalled for, and ungentlemanly.

Mr. *Everts* said: I meant no disrespect to the people of Ireland. I only made use of a term commonly applied in that section of the country to that portion of the Irish nation who come there for the purpose of laboring. I have perhaps as high a regard for the Irish character and the Irish people as any gentleman upon this floor. I meant to cast no imputation either upon the people to whom I alluded, or the race from which they sprang.

Mr. *Hemphill* said: I shall be opposed to making any person who may be here at the time of the adoption of the Constitution, though only a week, a citizen. I wish every such person to be here six months, and take the oath of allegiance. I see no sufficient reason for using the term "a citizen of the now Republic of Texas." I see no advantage in saying "a citizen of the United States and a citizen of Texas." I will offer a substitute for the substitute.

Mr. Hemphill offered the following, as a substitute for Mr. Everts' substitute for the 1st section:

"Every free male citizen [Indians not taxed, Africans and descendants of Africans excepted,] who, at the time being, hath attained the age of 21 years, and resided in the State six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or town in which he may actually reside at the time of the election, except at elections to fill the offices of Governor or Lieutenant Governor: *Provided*, that no officer, soldier, or marine, in the service of the United States, shall be eligible to a vote."

Mr. *Evans* said: I feel, perhaps, more interest in this question than in any other which has been discussed upon this floor. Three hundred citizens will be disfranchised by passing this provision, who understand as well as any when elections come on, whom to vote for. If you draw any distinction between old settlers and new settlers, you will perhaps do more harm than good. During the election, a great deal of injury was caused by the unjustifiable course which many old settlers took. A good many were willing to exclude these citizens, not only from the rights of voting, but from the right of serving in the Convention. A good deal of prejudice has existed upon this subject There are in our county several hundred new comers, all good citizens too, and they will not have an opportunity of taking the oath of allegiance; for a great many take the ground that there is no officer of the Republic of Texas authorized to administer the oath to them; they look upon this government as defunct. Devoted as they are to annexation, they will not reconcile their feelings very soon to being disfranchised.

Mr. Jones moved the previous question.

The question—shall the main question be now taken? was put and lost, by ayes and noes as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bagby, Cunningham, Gage, Henderson, Hicks, Horton, Jones, Latimer of L, Latimer of R. R., Lumpkin, Miller, Navarro, Power, Rains, Tarrant, Ochiltree, Van Zandt, and Young—20.

Noes—Messrs President, Armstrong of J., Bache, Brown, Caldwell, Clark, Cuney, Darnell, Davis, Evans, Everts, Forbes, Hemphill, Hogg, Holland, Hunter, Irion, Jewett, Lewis, Love, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Moore, Parker, Scott, Smyth and Standefer—30

Lost.

The question on Mr. Hemphill's substitute, was taken and carried.

The question being the adoption of the section as substituted.

Mr. *Mayfield* said: It appears to be defective. I do not hold the doctrine that by the mere operation of the change of government the citizens of Texas will become citizens of the United States, unless there shall be some declaration to that effect. In my opinion, we should make some provision for those here who are absolutely *bona fide* citizens of the country at the time of the adoption of the Constitution, from whatever class or country they may have come. If they have been induced to emigrate here, if they have sought this country as an asylum, and have adopted it as their home and abiding place, I hold that we should place something in this Constitution granting them all the rights and privileges of citizens. I do not think myself that by the mere operation of the change, they will thereby become citizens of the State, and also of the United States.

Mr. *Hemphill* said: We go into the Union as a State; and we are in the same situation as that of each of the original States when they formed the confederacy and adopted the Constitution. We go in as any one of those States went in them. We go in as North Carolina, for example, went in. She remained independent for some months; and it was necessary by special laws to extend the tariff to that State.

Mr. *Runnels* said: I shall vote against the substitute. In my opinion, all persons who are citizens of the Republic at the time of the adoption of the Constitution, should be qualified electors. I am satisfied myself too, that all those who are citizens of Texas at that time, will become by the change citizens of the United States. But, sir, the substitute will strike at the root of the naturalization laws of the United States, after we shall have become a portion of the United States. It does seem to me that, like all the other States, the naturalization laws should be enforced in this State. This is an important question. If this is fixed in the Constitution, it is to remain permanent. I shall vote against the adoption of the amendment as a section, and call for the ayes and noes.

Mr. *Hemphill* said: I will say, with regard to its striking at the roots of the naturalization laws of the United States, that I took it from the Constitution of Kentucky.

The ayes and noes being called, on the adoption of the section as substituted, stood as follows:

Ayes—Messrs. Bache, Brashear, Cunningham, Cuney, Evans, Forbes, Hemphill, Love, Lusk, McNeil, Navarro, Power and Ochiltree—13.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Caldwell, Cazneau, Clark, Darnell, Davis, Everts, Gage, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Kinney, Latimer of R. R., Lewis, Lumpkin, Lipscomb, Mayfield, McGowan, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standifer, Tarrant, VanZandt, White, Wright and Young—42.

Lost and section rejected.

On motion of Mr. Moore, the word "now," before "Republic," was stricken out.

Mr. *Hunter* moved to strike out the word "citizen," in 3d line, and insert "inhabitant." He thought it would cover the entire ground gentlemen had been some time contending for.

Lost.

Mr. Brown moved to insert, after the word "Constitution," the words "by the Congress of the United States"

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Armstrong of R., Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Davis, Evans, Forbes, Gage, Hemphil, Hogg, Holland, Irion, Kinney, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Navarro, Parker, Power, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, and Young—40.

Noes—Messrs. Armstrong of J., Bagby, Baylor, Darnell, Everts, Hicks, Hunter, Jewett, Jones, Lewis, Mayfield and Rains—12.

Carried.

Mr. Scott offered the following amendment to 1st section:

Insert, after the word "election," in 11th line, "any such qualified elector who may happen to be in any county, city, or town, other than that of his residence at the time of an election, or who shall have removed to any county, city, or town, within six months preceding the election, from any county, city, or town, in which he would have been a qualified elector, had he not so removed, may vote for any state or district officer, or member of Congress, for whom he could have voted in the county of his residence; or the county, city, or town, from which he may have so removed."

Adopted.

Mr. Jewett offered the following amendment, to come in after the word "elector," in the 11th line, and after Mr. Scott's amendment:

"And all free male persons, with the exceptions above stated, who are, *bona fide*, inhabitants of Texas at the time of the adoption of this Constitution by the people, or the acceptance thereof by the Congress of the United States of America, shall be entitled to, and enjoy all the rights and immunities of citizens of the State."

Mr. Forbes moved to refer the section and amendments to the judiciary committee. Lost.

On motion of Mr. Forbes, the Convention adjourned until half-past 8'clock, to morrow morning.

Tuesday, Aug. 12th, 1845.
Half past 8 o'clock, A. M.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Hemphill, chairman of the judiciary committee, made the following report:

COMMITTEE ROOM, Aug. 11th, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

The committee on the judicial department of the government, to whom was referred the 18th section of the article on the general provisions of the constitutiion, have had the same under consideration, and have instructed me to report the following substitute for the said section, viz:

18. It shall be the duty of the Legislature to pass laws more clearly defining the rights, duties and obligations of the partners in marriage in relation to their separate and their common property, authorizing also a suitable provision, out of the estate of the deceased wife or husband for the surviving partner where the husband or wife may have died rich, leaving the survivor in necessitous circumstances, due regard being had to the children of the deceased.

19. No law shall ever be passed, vesting in the husband, by virtue of the marriage, the separate property of the wife, as now recognized by law, or depriving her of the portion of the common property to which she is now entitled, nor shall the separate property of either partner ever be made liable for the debts of the other, contracted before marriage.

20. The legislature shall provide for recording in the proper office, (under suitable penalties for non-performance,) duly authenticated schedules of the separate property of the wife within not more than twelve months after the marriage or the acquisition of the property.

All of which is respectfully submitted to the honorable convention for adoption.

JOHN HEMPHILL,
Chairman.

A minority of the said committee made the following report:

To the Hon. THOS. J. RUSK,
President of the Convention:

A minority of the committee on the judiciary, to whom was referred the 18th section of general provisions of the constitution, report, that they dissent from the report of the majority of said committee in that respect, and recommend the following as a substitute for the said 18th section to be adopted by the convention.

JOHN ARMSTRONG.
R. E. B. BAYLOR.

Substitute for the 18th Section.

"The property owned by the wife at the time of her marriage, and such property as shall enure to her during coverture, by gift, will, or descent, shall be her own separate property, and one-third part of the property of her husband at the time of his death, including the homestead, shall remain to the widow during her widowood.

Laws shall be passed providing for the registration of the wife's separate property.

Mr. Runnels, chairman of the legislative committee, made the following report:

Committee Room, Aug. 12, 1845.

To the Hon. THOS. J. RUSK,

President of the Convention:

The legislative committee to whom was referred the section to come in after the 6th section of the general provisions, have had the same under consideration, and have instructed me to report the same, with the following amendments, to wit:

"Provided that nothing in this section shall be so construed as to effect the claims of persons against the Republic of Texas as heretofore existing," and recommend its adoption.

H. G. RUNNELS,
Chairman.

All of which reports were laid on the table to come up among the orders of the day.

Mr. Everts offered the following resolution:

Resolved, That a committee of   be appointed to enquire into the propriety of dividing Texas into two congressional districts, agreeably to the act of the Congress of the United States of 1842, upon that subject, in order to elect two representatives for the State of Texas until the year 1853.

Mr. *Everts* said: I wish to call the attention of the house to this subject, that this convention may provide the means of being represented in Congress as soon after our admission as possible. The act of Congress of 1842 fixes the ratio of representation at 70,680. That act requires each State to be divided into as many districts as she is entitled to representatives under the ratio of apportionment. Before the passage of that act each State regulated its own districts in various modes. The ratio of representation at 70,680 I believe would give Texas two representatives. The same act provides that any State having a residuum over one half of 70,680 shall be entitled to two representatives. The constitution of the United States, with regard to the subject of representation, provides that each State shall be entitled to one representative, irrespectively of the amount of population. So that if the population of Texas shall amount to 106,000 souls, three-fifths of her black population counted in, Texas will be entitled to two representatives under the present apportionment. I am aware that some gentlemen in this convention believe that we are entitled by the terms of annexation to two representatives, inasmuch as the amendments to the resolutions in Congress declared that if we went in by treaty as contemplated, we should be entitled under the treaty to two representatives, I think we are by population entitled to two. It does seem to me that the State should be districted, and that it should be provided for by this convention, that there may be no delay in this matter; that, so soon as the legislature shall meet, we may elect two Senators, and that at the first election for Governor these two representatives may be elected, and elected too, agreeably to the act of Congress of 1842. As we fix the apportionment now, or, as representation is determined now, it will have to remain till 1853. In 1850, the government of the U. States will take the census. In 1852, the apportionments will be made under the new census. In 1853, the elections to Congress will come on under the apportionments made after the census of 1850.

On motion of Mr. Mayfield, the rule was suspended, the blank filled with seven, and the resolution adopted.

On motion of Mr. Gage, the Convention took up the

ORDERS OF THE DAY.

The 21st section of the general provisions being the special order of the day, was, on motion of Mr. Jewett, laid on the table.

On motion of Mr. Caldwell, the report of the committee on the legislative department, was taken up.

Mr. Jewett's amendment to the 1st section offered on yesterday, being first in order, was read by the secretary.

Mr. Brown moved to refer the section, with the amendment, to a select committee, with instructions to report to-morrow.

Mr. *Davis* said: It seems to me unnecessary to make the reference. We have the right to say who shall be citizens of the State of Texas. I suppose there is no doubt that such persons as we make citizens of Texas, will be citizens of the United States upon our admission.

Mr. *Ochiltree* said: I differ from the gentleman from Liberty with regard to his premises. I hold this truth to be incontrovertible, that every person who is a citizen under the constitution of the Republic of Texas, at the time of the admission of Texas into the United States, and the final consummation of annexation, will be a citizen of the United States by the act of admission. But I cannot agree with the gentleman in the doctrine that every man whom we declare a citizen by the constitution, we are now framing, will be a citizen of the United States.—There is a wide difference. Because, though we are living under the constitution of the Republic of Texas, by a sort of political fiction we are adopting a constitution as an integral portion of the U. States. It would be absurd to say, that by the constitution we are now framing we could create citizens for the federal government.

Mr. *Davis* said: We have omnipotent powers as a State. We have the right to declare who are citizens and who are not; and the United States government has no right to interfere with it. As a separate, distinct and independent government, we certainly have the right to say who shall be citizens of this government; and if we have the right to say so, have we not the right to say so in our Constitution? I do not believe that a territory originally belonging to the United States could make persons citizens who have not resided in the country the length of time required by the laws of the United States. But, sir, in the situation in which we are, separate, distinct and independent, the laws of the United States upon the subject of naturalization, having no power, effect or influence over us at this time, cannot control us.

Mr. *Mayfield* said: The true principle, I think, is this: Every country, in the acquisition of new territory and population, by virtue of that acquisition, renders the population of that territory her own citizens. I think when we trace the history of all nations, and more particularly that of England, we shall find that in all acquisitions of states or nations, effected either by treaty, conquest, or other mode, the citizens who become annexed or transferred to the substantive power, are immediately entitled to all the rights, privileges and immunities belonging to those of the mother or substantive state. The provisions upon this subject in the Louisiana treaty of 1803, in that for the acquisition of Florida, and more recently in the Ashburton treaty, will be recollected by all. The small portion of citizens, who, under the latter treaty, fell within the line of Maine, were and are at this day considered citizens of the U. States, although they have never taken the oath of allegiance, in conformity with the laws. I think the principle for which I contend, is justified by the experience of ages, and the dictates of wisdom, policy and justice.

Mr. *Lusk* said: Legal gentlemen seem to differ in opinion as to what is a citizen and the power to make one; and I should like to have the report of a committee upon the subject. I do hope the House will refer the section. I doubt whether we can get out of it to-day or not, there is so much difference of opinion among the smart men who talk a great deal. I trust it will be referred with all its amendments to a committee, composed of men of legal information and good men.

Referred, with all amendments, to a select committee, composed of Messrs. Brown, Everts, Lipscomb, Hemphill, and Latimer of Red River.

In 2d section, Mr. Love moved to amend by transposing the words, not altering the sense. Carried.

The section was then adopted.

In 4th section, Mr. Forbes moved to strike out the word "district" in 2d line. Lost, and section adopted.

In 5th section, Mr. Cuney moved to strike out "two years," and insert "one year," in 2d line.

Mr. *Love* said: I am very much in favor of the amendment proposed by the gentleman from Austin. I think necessity will require frequent sessions for several years. And on the score of economy, I think that gentlemen are mistaken. I do not see any difference in expenditure in those states which have biennial sessions. The Legislature of Tennessee, which meets biennially, is in session four months, while that of Kentucky, which meets annually, is in session only two months. I think it indispensably necessary to meet annually for the next four or five years to come. If you look over the statute book and see the mass of legislation, and consider the necessity of changes in our system, you will see that annual sessions are necessary. I do not even hope that this principle will prevail, but I am confident myself that it is a just and correct one, as well as economical, and that it will be so found after experiment. By frequent sessions, the people have the control over their servants, and that it is the best preservative of their liberties. I will call for the ayes and noes, for the purpose of recording my vote.

Mr. *Young* said: I hope the question will be divided. I will vote for striking out, for the purpose of inserting three years instead of two.

Mr. *Hemphill* said: I do not see any thing in this provision which regulates the number of sessions that shall be holden: it only provides that members shall be elected biennially. There are several states which have biennial elections, though they have annual sessions. I am in favor of that system, because I think it less liable to the evils of change. Members at the first session will become acquainted with their duties; and I think at the second session they will be obliged to change and modify many laws passed at the first. They are to pass laws having but one object, which is to be expressed in the title: they will find difficulty in this, particularly those who have been accustomed to the system heretofore pursued.

Mr. *Moore* said: A gentleman in favor of striking out "two years," stated his belief that nothing will be gained on the score of economy, and mentions the Legislatures of Tennessee and Kentucky as instances. He omits, however, to notice the very important item of *mileage*, which often amounts to almost as much as the pay, when the Legislature is in session but a few weeks. We adopt a section in this Constitution by which we provide that the laws now in force shall remain in force until changed. I believe that every member is aware that most of the laws now in force have been found to act beneficially, and that no injury will result from their continuing in force for two years. They can be amended gradually; and no doubt it would be the better way. Another advantage is to be gained by electing members for two years. The first year a member is hardly prepared to perform his duty advantageously; at the close of the session he is tenfold better qualified than at the outset. A member who is reelected is considered in most instances as far better qualified to perform his duties than at his first session.

Mr. *Baylor* said: The question under consideration, Mr. President, is one which I think of considerable moment; and I have reflected a great deal upon it. In any aspect there will be evils which will present themselves. But it is our duty, it seems to me, to adopt that side which presents the least. It cannot have escaped any man who has reflected upon the course of legislation in states under a popular government, that one of the greatest evils of the day is excessive legislation. In all probability, if we were to try the biennial sessions, we should avoid confusion to some extent. But I take it to be a self-evident proposition, that every country requires just so much and no more legislation, and if it has wise lawgivers, they will never transcend that boundary line. If this is true, and those who have legislative power placed in their hands are governed by this principle, it is a matter of little moment whether the sessions of the Legislature are annual or biennial. I know that to some extent we should avoid this excessive legislation and the consequent confusion which necessarily prevails, if we adopt biennial sessions. But, sir, I do not like the principle. I cannot become entirely satisfied with it. Look at the history of other governments pretending to democratic principles. England commenced at first with two or three years, and at last she elects her members of the House of Commons for seven years. I fear that this would be the entering wedge, which, in the course of time, when we shall all be gathered to our fathers, may lead on to a similar state of things. It is a great principle in our form of government, that the more direct and immediate the responsibility of the servants of the people to the people themselves, the more certain it is that the will of the people will prevail, and the more certain that if evils are introduced, the people will and can correct them. I am certain that annual elections make this responsibility more direct; that they are more democratic; but whether this mode is attended with evils sufficient to counterbalance its advantages, is a question that each gentleman must decide for himself. There is another single reflection which I will throw in, and close the few brief remarks which I have thought it my duty to make. Just in the ratio that we lengthen the time for which we elect any individual to any office, whether the chief magistracy, or in the legislative department, we weaken his responsibility to the people, and the struggle for office will be more brutal. If elections occur annually, and aspirants are to retain office but a short time, our popular elections in all probability will not be so turbulent or violent.

Mr. *Lusk* said: I have a great deal of confidence in the opinions of the gentleman who preceded me, but on this question I am compelled to differ from him. It is said, in favor of frequent elections, that if we get bad men in, we can get them out directly. But, sir, on the other hand, if we elect members for two years, voters will be looking directly to that fact, and will try and get the best men, because if they elect them for two years, they cannot so soon get them out. I am in favor of electing members for two years, and of biennial sessions; and I wish to put it in the power of the Governor, in case of necessity, to call the Legislature together. And I would then confine the members of the Legislature to action upon the propositions suggested by him as connected with the emergency. I believe it the interest of the country to have few elections, as more conducive to civility and quiet.

Mr. *Jones* said: I am opposed to the amendment for two reasons, which it is due to myself to express. In the first place, on account of economy. But that is not the principal reason. The past history of our country has satisfied me, as well, I believe, as a large majority of the people, that we have had too much legislation. Annual elections with us have proved a great evil, instead of a blessing. It is a well known fact, that in this country of so extended a domain, many enactments, before being promulgated, have been repealed by subsequent Legislatures. The gentleman from Fayette tells you that it is a matter of no importance, whether you make the sessions annual or biennial: the expense will be precisely the same; so much and no more legislation is necessary for the welfare of the country. But if the gentleman takes a view of the extent of the country, and the great proportion of expenditure resulting from mileage, which, assuming sixty-four as the number of members, would amount to over four thousand dollars, he will see that it will make a great difference on the score of economy.

Mr. *Caldwell* said: As I shall vote against striking out, I feel it my duty to give my reasons. In addition to these already given, I have others. When the Legislature meets so very frequently, you will find that body taking upon itself authority which ought of right to belong to other departments. It is sometimes called upon, on account of the cheapness to individuals to interfere in matters with which it has nothing to do. On account of this cheapness, parties frequently apply to the Legislature to act judicially; and you will find that one-half the time of the session, when it meets so often, is occupied in enacting relief laws. If the session comes on but once in two years, you will find that the Legislature will authorize a judicial tribunal to extend relief to these applicants when they make out a statement of facts. Otherwise, they will take the mode which is cheapest to themselves, but most expensive to the country. If sessions are less frequent, instead of acting the part of auditor and comptroller, the Legislature will invest the auditor and comptroller with the power to settle accounts; and in the case of claims for land, it will vest the judicial tribunals with the power of granting relief without any additional expense to the country. If the sessions are annual, instead of sitting less than thirty days, the Legislature will sit sixty at least in every year.

Mr. *Brown* said: I shall oppose the motion, because I do not see any reason in nature why the Legislature should meet once a year, more than why it should meet once a month. I think the gentleman from Fayette is mistaken in his argument. It will be found, I think, that the preservation of our liberties has very little to do with short terms or long terms. The truth is, that whenever the people of this Republic get tired of their liberty, they will throw it down and take up some other form of government. I think that all we have to do in this matter is, to adopt some convenient and expedient system. I think if representatives are elected for two years, all the requisite responsibility to the people will be secured, and there will be time enough to transact all the business that will have to be done.

Mr. *Love* said: I have heard some doctrine asserted in the argument upon this question which is certainly new to me. I say, sir, that the more frequently we recur to the people, the fountain of power, the more pure will be the laws which are made, and the better will they be administered. To avoid difficulties we may give the Senate a longer term, and the Executive a veto power, as a check and control over the licentiousness of popular impulse. It is argued that, in order that the people may be properly served, the terms of office must be made long. This is a novel doctrine to me. Even in the Congress of the United States, though members are elected for two years, they must hold annual sessions. What would be the effect of adopting the system contended for? The governor may call the Legislature together if he chooses; and you are placing the rights and wishes of the people in the hands of a single man. Now, I believe, and assert again, that the immediate representatives of the people should come before them often to account for what they have done. As a rule, the representative who does his duty will be elected again; and, as a rule, if he does not do his duty, he will not be re-elected. The gentleman from Colorado corrected the gentleman from Fayette; he is in a great error himself. It will be found that every British patriot since the term of seven years was adopted, has taken a stand with those who labored to reduce it. Who sustain it? The king and the nobles. Every eminent patriot, Burke, Grattan, Curran, that whole class of men, did take a stand in favor of triennial elections, and continued in favor of them, until severally bought off by the government. I advocate the motion from a sense of right. God knows I am not disposed to cater for public opinion upon any subject, or to take any course in which my principles do not bear me out.

Although there should not be a single solitary member vote for it besides myself, I shall record my voice in its favor.

Mr. *Parker* said: I have long been of the opinion, Mr. President, that the Legislature should meet but once in two years. Arguments have been adduced here to show the propriety of annual sessions. But, sir, the change of government now about to take place, must show every gentleman the necessity of economy, when it will be recollected that so soon as our Constitution shall have been received and accepted by the Congress of the United States, we lose our impost duties, and the State government must depend for its support solely upon direct taxation. That fact, and the disposition I have seen evinced upon this floor, for cutting out an extravagant State government, are sufficient of themselves to convince me of the expediency of biennial sessions. New members are unacquainted with parliamentary usages, often ignorant of the grand principles of law making, and incapable of enacting such laws as will benefit the people. If your elections, then, are annual, and your State Legislature meets annually, it will, at every session, be filled by new members. They will have to do something; they will repeal laws; they will enact laws, which will govern the people, whether right or wrong. As was wisely remarked by the gentleman from Fayette, over much legislation has been one of the greatest calamities of this nation. It is a fact, that justices of the peace at this day are acting under laws that are repealed; such is the condition of the country, and so inefficient are the means of transportation, that the people of Texas often do not get the laws of the country passed by one Congress, until portions of them have been repealed by another. There has not been a Congress under the Republic, but has repealed sections and parts of sections, acts and parts of acts. Our statutes present a mass of confusion. Then, in point of policy, is it not best to take this expense off the people, when we have to look for the future to the direct taxes? It seems to me that the propriety and expediency of the system of biennial sessions must present themselves to the mind of every gentleman. It would save a heavy expense to the people of the country, and the officers of the government would have the laws in time to know what they are. I hope gentlemen upon this floor will duly reflect upon this subject.

Mr. *Evans* said: I shall vote with the gentleman from Galveston to strike out, with the view of moving a re-consideration of the vote upon a provision introduced a few days ago under the head of General Provisions. I draw all my notions of republican government, not so much from governments actually existing, as from political writers and philosophers. Upon the subject of economy, I find no gentleman upon this floor that will go with me so far as I wish to go. I do not claim any credit upon that score. But, sir, the idea of economy will not influence my vote in fixing this matter. We might, if we saw proper, have an aristocratic government, and a very cheap one. A kingly government is very cheap; representative governments are always dear. That is the price we pay for our liberties. I will vote with the gentleman from Galveston for striking out; and if the motion succeed, I will them move again to confine the Legislature strictly within the line of their legislative duties.

Mr. *Ochiltree* said. I am certainly in favor of the proposition of the gentleman from Galveston to a certain extent. I look upon it as entirely impossible to get along with biennial sessions, at least until the year 1850. At the last session of Congress at Washington, the members were as laborious and industrious as those of any I have witnessed in the Republic; and they passed, during a session of two months and five days, I think, but seven, and at the extent, but nine general laws. In looking over the General Provisions which we have adopted, I find that the Legislature will be imperatively called upon to pass sixteen laws of a general character; and I have no idea that the General Provisions will require one-twentieth part of the legislation necessary. On the score of economy, I have no idea that we shall save any thing by biennial sessions. Our laws have to undergo a total, radical change. If we have annual sessions till 1850, that will give us two additional sessions of the Legislature; and I am well satisfied that the advantages of this plan will amply compensate for the increased expense. I believe it utterly impossible to get along with biennial sessions for four or five years to come; but after that time I am not prepared to express an opinion. I hope the house will consider this matter well.

Mr. *Caldwell* said: The gentleman from Nacogdoches appears to be thoroughly convinced of the absolute necessity of annual sessions till 1850, because, as he says, we are compelled to enact the laws consequent upon the adoption of our Constitution. Why, sir, we have made it discretionary with the Legislature to pass these laws, and it may not be necessary for years to come, as the laws upon all subjects already in force, will remain in force until repealed. I am still of opinion, that if the Legislature meets every year, more than one-half of the time will be taken up by private business. And I am satisfied that, with annual sessions, taxation will be so burthensome, that the people cannot and will not bear it. I am satisfied that it is the popular wish to have biennial sessions; the people are tired and worn out with the present system.

Mr. *Mayfield* said: I have listened with care to the arguments of the gentlemen who have taken different sides upon this question. And I have come to the conclusion, after the best reflection I could give to the subject, that the safest criterion is, to trust as often as possible to the collective wisdom of the people, and that the judgment of the people at all times, so far as the interest and safety of the State are concerned, is to be relied upon with greater confidence than that of any individual or set of statesmen or philosophers that could be selected. If you leave to the free judgment of the people all subjects that affect their rights or interests, in nineteen cases out of twenty, you will find their judgment correct. If this is a sound principle in government, we should refer all questions affecting the rights, interests and prosperity of the State as frequently as possible to the people. It is objected, however, that annual sessions are expensive, and will be consumed in passing relief bills. This objection appears to me to be entitled to no weight, because if relief bills are to be acted on, I am satisfied that as much time will be consumed by them in biennial sessions, as there would be in annual sessions. It is insisted, too, that men cannot become learned or inducted into the science of legislation, until they have served a term of years; that they must be thus schooled and educated, before they can give an enlightened vote, or make a sensible speech. If so, we should provide in the Constitution for a class of men to be educated to legislate for us. We should take the business entirely out of the hands of the people, and give it exclusively to a class not indoctrinated and and learned in legislation. But, coming back to the true principle, I will admit that frequent changes in legislation are productive of evils; yet these evils the people themselves have the power of correcting, whenever they become onerous. If the majority are satisfied of an error, they should have the earliest opportunity of correcting that error. Because laws are repealed, evils do not necessarily follow. They are repealed, because the public voice is raised against the incorporation of such acts in the body of the laws:, and not because the Legislature must do something. If then errors have been committed in legislation, and things have been introduced into the statute book which should not have a place there, is it not right that they should be removed at the earliest day practicable? And what, I ask, when you make a correct calculation, would be the difference in expense between the two systems? I think that annual sessions will be found most expedient, when we consider the accumulation of business to be performed on account of the change in the condition of the country. Every day and every hour will present, perhaps for half a century to come, new questions of vital importance, not only to our country, but to the whole American continent.

The question upon striking out was then taken.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Baylor, Bache, Brashear, Cuney, Evans, Everts, Hunter, Latimer of L., Love, Lipscomb, Mayfield, McNeill, Ochiltree and White—13.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Forbes, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Jones, Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, Moore, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Van Zandt, Wright and Young—42.

So the question on striking out was lost.

Mr. Runnels offered the following amendment:

Add to the 5th section, "the sessions of the Legislature shall be biennial, at such time as the Legislature shall designate."

Mr. Hemphill moved to strike out "biennial," and insert "annual" in the amendment. Lost.

Mr. Van Zandt moved to amend the amendment by striking out after the words "time as," and inserting "shall be prescribed by law," which amendment was adopted; and the amendment as amended was adopted.

Mr. Ochiltree offered the following as a substitute for the section as amended:

"Until the year 1850, the members of the House of Representatives shall be chosen by the qualified electors, and shall serve for the term of one year from the commencement of the general election, and no longer, and the sessions of the Legislature until that time shall be annual; after the year 1850. the members of the House of Representatives shall serve for the term of two years and no longer, and the sessions of the Legislature shall be biennial: Provided that the Governor shall have the power to convene the Legislature upon extraordinary occasions."

Mr. *Henderson* said: I hope the substitute will not be adopted. I had rather reverse it. For the next five years we shall be poorly able to meet the expenses of the government; it would be well during that time to be as economical as possible. I would rather say that after that time the Legislature shall meet annually.

Mr. *Mayfield* said: I hope the substitute will prevail. It is, I believe, a well settled maxim, that the price of liberty is eternal vigilance. If we cannot get it for all time to come, let us get it till 1850, during which time the most important questions will be submitted to the consideration of the Legislature.

Mr. *Lewis* said: I feel perfectly assured that there is no necessity for a single remark upon my part, even if it could exert any influence upon this House. I know that the good sense of this body, after having witnessed the course of legislation in this country for the last five years, will never seek annual sessions again. There was a time when they were necessary; when as a republic we had relations with foreign powers. It was then necessary for the Congress to meet annually, for the purpose of making such laws as might be required by the state of such relations. It is true that the Congress of the United States meets annually. The necessity of annual sessions there must be obvious to every one. They are necessary to regulate intercourse with foreign states; necessary to pass laws for the purpose of carrying on the external and the internal commerce of the country.

Look, sir, at the annals of legislation in this country for the few last years. A gentleman has well remarked that a certain Congress passed but nine laws of a general character; while the relief laws passed by the same Congress, fill a volume. And, sir, are we to be cursed for the next five or six years with annual legislation of this sort? Are we to be cursed with the annual sessions of a body taking from the judicial tribunals matters which belong to them, and passing relief laws at an expense to the country of several hundred dollars per day? It is insisted that we must; and it is said too that the liberties of the people cannot be preserved without a frequent reference to the people. Sir, annual elections not only create confusion, but they have a demoralising effect upon the people. They break up the social relations which should ever exist in a community, and personal antipathies and personal predilections will regulate elections by the people. But if you give them this election but once in two years, they will look upon the station as a more dignified one, and will be more particular in placing men there. They will take care to select the most talented and the best qualified men to take care of their interests.

On motion of Mr. Davis, a call of the Convention was ordered, and on motion of Mr. Moore, the call was suspended.

The ayes and noes were called for, on the adoption of the substitute.

Mr. *Jewett* said: I shall vote against it, because I wish to keep this little State government, if we can, fast anchored in the harbor of economy. I think, as sufficient power is left to the governor to meet emergencies, it would be best to have the people elect their Representatives for two years. I do not wish to cut loose from a safe anchorage.

Mr. *Cuney* said: Opposed as I am to incorporating in this Constitution a provision for biennial sessions of the Legislature, as being not only unwise and inexpedient, but at war with the true principles of a republican and representative government, and regarding the amendment of the gentleman from Nacogdoches as an abandonment of the position taken by me in offering to amend by striking out "two years," and inserting "one," which the Convention refused to adopt, I shall vote *no*.

The ayes and noes were then called and stood as follows:

Ayes—Messrs. Bache, Brashear, Everts, Hemphill, Hunter, Irion, Mayfield, Navarro, Ochiltree and White—10.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans. Forbes, Gage, Henderson, Hicks, Hogg, Horton. Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, M'Neill, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Van Zandt, Wright and Young—43.

So the substitute was rejected.

Mr. Clark offered the following amendment, as a substitute for the section:

"Members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years, from the day of the general election."

He said that the expression "shall serve" appeared to him to be imperative.

The amendment was rejected.

Mr. Forbes moved to insert the word "biennially" after the word "chosen." Lost.

Mr. *Caldwell* said: It appeared to him that the Convention should have stricken out the expression "shall serve," as proposed by the gentleman from Harrison.

On motion of Mr. Anderson, the vote rejecting the substitute offered by Mr. Clark was reconsidered, and the amendment adopted.

The section as substituted was then adopted.

Mr. Forbes offered the following as an additional section, to come in after the 5th section.

"The regular sessions of the Legislature shall not exceed sixty days, and any legislative enactment passed after the expiration of such sixty days shall be null and void; and when convened upon extraordinary occasions by the Governor, its action shall be confined to the object for which the Legislature shall be assembled, but this provision shall not apply to the first session of the Legislature held under the Constitution."

Mr. *Forbes* said: He would now offer as an additional section, what he intended as an amendment to the 5th; his object, however, had been partially met by the several amendments adopted by the Convention. They had not, however, gone far enough. If an economical administration of the government, and exemption from too much and bad legislation, required that the sessions of the Legislature should be biennial, in order to make sure of this great end, it is necessary that we should go yet farther, and limit the time of the sessions. If it was right to declare in the Constitution, that the Legislature should meet but once in two years, it was equally so to say that their sessions should not be extended beyond a certain number of days; for without the latter provision, the first was a nullity. The first step was the beginning, the second the completion of a good work. For without the restriction provided for in this section, instead of having the Legislature sitting every year some thirty or sixty days, we shall have a biennial session extended to three or four months. Such would be the inevitable result, and the only object gained would be the saving of a few dollars mileage; the curse, of bad and excessive legislation, would still be entailed upon the country.

The latter part of the section had reference to extra sessions. This restriction, Mr. F. thought of the first necessity. The Convention had decided by a large vote that the great interests and general welfare of the country would be promoted by having biennial instead of annual sessions. In order, however, to provide for extraordinary occasions, extra sessions of the Legislature could be called by the Governor. This was an important, indeed necessary provision. But it ever had been and would be abused; unless guarded against by the Constitution. This was not a bare assertion, but a fact shown and illustrated, in the history of every extra session of our own Congress. Mr. F. said he need not remind the Convention of the action of the late called session. Unless you confine the Legislature to the particular objects for the consideration of which they are assembled, general and private legislation will always be gone into, and the important objects for which they have been assembled, made secondary to party and sectional purposes, and the object contemplated to be reached in the 5th section will be completely defeated. Mr. F. hoped the Convention would see the importance and necessity of the provisions embraced in this section.

Mr. Anderson offered the following amendment to the amendment, to come in after the words "sixty days," in 2d line, "Unless a press of business would require a longer session."

Mr. *Forbes* said: He hoped the amendment of the gentleman from Galveston would not prevail. The object was apparent to defeat the section. Mr. F. was not disposed to thrust his views upon the Convention, but he claimed and should ever exercise the right of presenting and advocating any measure which he deemed important to the public interest. Nor had he ever attempted to defeat any measure by indirect or unfair means. When any proposition was made, it should rest upon its merits. If it contained any, it was entitled to the consideration of the House. If it was objectionable, it should be exposed in a proper manner. To attack any measure in this indirect and covert way, was not only unfair but discourteous. If the gentleman from Gonzales was opposed to the section, why did he not meet it fairly? why did he not state his objections? why did he not point out how, or in what manner the public interests would be injured? why did he not show that it was not necessary to effect an object, deemed by the Convention of the first importance? This was the way to meet the question fairly, and he hoped the amendment would be rejected, and that the additional section would be permitted to stand upon its own merits, and adopted or rejected, and not be borne down by amendments.

The amendment was rejected.

Mr. Mayfield moved to amend by striking out "sixty days," and inserting "thirty days." Lost.

The ayes and noes being called on the adoption of the additional section, stood thus:

Ayes—Messrs. Baylor, Brashear, Burroughs, Cuney, Forbes, Hunter, Latimer of L., McGowan, Runnels, Ochiltree and White—11.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of of R., Bagby, Brown, Bache, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Evans, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Irion, Jewett, Jones, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Mayfield, McNeill, Moore, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Van Zandt and Young—40.

So the additional section was rejected.

On motion of Mr. Armstrong of J., the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Mr. Hemphill, chairman of the Committee on the Judiciary, made the following report:

Committee Room, Aug. 14th, 1845.

To the Hon. Thomas J. Rusk,
President of the Convention:

The committee on the Judiciary, to whom was referred a resolution authorizing the Legislature to erect new States out of the Territory of Texas of convenient size, not exceeding four in number, in addition to this State, whenever sufficient population may authorize such erection, agreeably to the provisions of the Constitution and laws of the United States, to be admitted as separate States into the Union, have had the same under consideration, and have instructed me to report and recommend the following as a substitute, viz:

The Legislature of this State is authorized to consent to the formation of new States out of the Territory of the State; and said new States are to be formed in accordance with the terms and conditions of the second section of the Joint Resolution for annexing Texas to the United States.

And the same is respectfully submitted.

JOHN HEMPHILL,
Chairman.

Mr. Parker, chairman of the committee on printing, made the following report:

Committee Room, Aug. 12, 1845.

To the Honorable THOS. J. RUSK,
President of the Convention:

The committee on printing, who were authorized by a resolution of this convention of the 19th ult to have one thousand copies of the Ordinance of the fourth of July, accepting the propositions of the Congress of the United States; also, of the resolution of the same body of the 7th of said month, authorizing and requiring the President of the United States to occupy Texas with the forces of the United States, printed in the Castilian language, have the honor to report:

That they have performed said duty, having authorized Mr. George Fisher, the interpreter and translator to the convention, to superintend the work and distribute the same to those persons of the Republic of Texas inhabited by the people for whose benefit and in whose behalf the said documents were printed: They further beg leave to report, that the said interpreter and translator, in the discharge of his duty, has given the distribution to the said documents in the manner and form set forth in his report upon the subject, which report is hereby accompanying, and made a part of this report.

Your committee would respectfully suggest the propriety of referring to the committee on the legislative department to enquire into the expediency of apportioning to the inhabitants of that part of the Santa Fe territory which, in the opinion of this convention, is properly included in, and of right belongs to the Republic of Texas, two representatives and one senator of the future State of Texas.

Your committee would also respectfully suggest the propriety and the necessity of translating the constitution of the future State of Texas, so soon as the same shall have been adopted—as also any ordinance that may be adopted by this convention—into the Castilian language; and that a sufficient number of the same be printed and promulgated for the use and information of that part of the citizens of Texas inhabiting the western frontier with the view of their re-organizing according to the provisions of the said constitution, from an independent national government to that of a state of the American Union.

All of which is respectfully submitted.

ISAAC PARKER,
Chairman.

Which reports were laid on the table to come up among the orders of the day.

Mr. Mayfield, chairman of the select committee to whom was referred the sections of the legislative department, in regard to the apportionment of representatives, made the following report:

COMMITTEE ROOM, Aug. 12th, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

The majority of the select committee to whom was referred the 3d, 9th and 30th sections of the report of the committee on the legislative department, together with the subject of the census, after consideration thereon, and viewing the subject in all its bearings, have instructed me to report as follows:

1st. That the legislature shall, at its first session under the constitution, provide by law for taking an enumeration of the free population of the State, after which the basis of representation in the house of representatives shall be governed by such enumeration.

2d. Until such an enumeration shall be made, the number of representatives in the house shall be forty-six, except as hereinafter provided for, to be chosen as follows: one for each county, and one for every five hundred qualified voters therein, and after the first enumeration the house of representatives shall consist of not less than forty-five, nor more than ninety members, and apportioned according to population.

3d. That the Senate shall consist of not less than nineteen nor more than thirty-three members, shall be apportioned as hereafter provided, and shall be chosen by the qualified electors of the senatorial district. I am also instructed to report that a majority of the committee agree to the propriety of laying off one new county to be taken from the territory of Nacogdoches, Robertson and Fannin counties, and give to it one representative until the first enumeration; and, also, that Bexar be allowed, until such time, one additional representative.

All of which is respectfully submitted,

J. S. MAYFIELD,
Chairman of Select Committee.

Substitute reported by the Committee.

9. The whole number of Senators shall, at the next session, after the several periods of making the enumeration, be fixed by the legislature, and apportioned among the several districts, to be established by law, according to the number of qualified electors; and shall never be less than nineteen, nor more than thirty-three.

30. The legislature shall at their first meeting, and in the year one thousand eight hundred and fifty, and in not less than every four nor more than every eight years thereafter, cause an enumeration to be made of all free inhabitants (Indians not taxed, Africans and descendants of Africans excepted) of the state, designating particularly the number of qualified electors, and the whole number of representatives shall, at the several periods of making such enumeration be fixed by the legislature, and apportioned among the several counties, cities or towns entitled to separate representation, according to the number of free population in each, and shall not be less than forty-five nor more than 90.

Which report was laid on the table to come up among the orders of the day.

The report of the committee on the legislative department was taken up.

On motion of Mr. Van Zandt, the 6th section was stricken out.

In 7th section, Mr. Moore moved to strike out the word "now," where it occurs before "Republic."

Carried.

Mr. Davis moved to strike out "year" and insert 'six months.'

Lost.

On motion of Mr. Runnels, the word 'and,' in 3d line was stricken out and 'or' inserted.

On motion of Mr. Henderson, the word 'to,' before 'twenty one,' was stricken out.

The section was then adopted.

Mr. Anderson offered the following amendment:

Add to 8th section 'and the election for Governor and members to the Legislature shall be held at a different time from the elections for county officers.'

Rejected, and the section adopted.

On motion of Mr. Horton, the vote adopting the amendment of Mr. Runnels to the 8th section, to strike out 'and' and insert 'or,' was reconsidered, and the question on striking out and inserting lost.

The 9th section was laid on the table.

Mr. Gage offered the following as an additional section to come in after the 8th:

Until after the first enumeration and apportionment, under this constitution, the following shall be the apportionment amongst the several districts and counties of this state: The counties of Fannin and Lamar shall elect one senator, Red River and Bowie one, Harrison one, San Augustine and Shelby one, Nacogdoches, Rusk and Houston two, Sabine and Jasper one, Liberty and Jefferson one, Harris and Fort Bend one, Montgomery one, Robertson and Brazos one, Galveston and Brazoria one, Washington and Milam one, Fayette and Bastrop one, Travis and Gonzales one, Austin, Matagorda and Colorado one, Jackson, Victoria and Goliad one, Refugio and San Patricio one, and the county of Bexar one senator.

The county of Montgomery shall elect four representatives, the counties of Red River, Harrison, Nacogdoches, Harris and Washington shall elect three representatives each; the counties of Fannin, Lamar, Bowie, Shelby, San Augustine, Rusk, Houston, Sabine, Liberty, Robertson, Galveston, Brazoria, Fayette, Colorado, Austin, Gonzales and Bexar, two representatives each; the counties of Jasper, Jefferson, Brazos, Milam, Bastrop, Travis, Matagorda, Jackson, Fort Bend, Victoria, Refugio, Goliad and San Patricio, one representative each.

Mr. Burroughs moved to lay the additional section on the table.

Lost.

On motion of Mr. Mayfield, the additional section was laid on the table to come up with the report of the select committee upon the same subject.

Mr. Hogg offered the following as an additional section:

'The first Legislature shall be composed of thirty-seven representatives and thirteen senators, and no more, until an enumeration of the inhabitants shall be made, and an apportionment made of representation upon the basis of free population, provided that the house of representatives shall not consist of less thirty seven members, nor more than one hundred members, and that the senate shall not consist of less than thirteen members, nor more than fifty, which said enumeration and apportionment shall be made by the year 1850, at such time and under such regulations as the legislature may by law direct, and until the said enumeration and apportionment shall be made: The county of Fayette shall be entitled to one representative, the county of Fort Bend to one representative, the county of Galveston to one, the county of Harris to two, the county of Harrison to two, the county of Houston to one, the county of Lamar to one, the county of Liberty to one, the county of Montgomery to three, the county of Nacogdoches to two, the county of Red River to two, the county of Shelby to one, the county of Washington to two, the county of San Augustine to one, the county of Rusk to one, the county of Sabine to one, the county of Robertson to one, the counties of Gonzales and Goliad to one, the county of Travis to one, the county of Austin to one, the county of Bastrop to one, the county of Bexar to one, the county of Bowie to one, the county of Brazoria to one, the county of Colorado to one, the county of Fannin to one, the counties of Brazos and Milam to one, the counties of Jasper and Jefferson to one, the counties of Matagorda and Jackson to one, and the counties of San Patricio, Refugio and Victoria to one representative.

Until the said enumeration and apportionment shall be made, the counties of Galveston and Harris shall be entitled to one senator, the county of Montgomery to one senator, the counties of San Augustine, Sabine and Shelby to one senator, the counties of Nacogdoches and Houston to one senator, the counties of Austin, Washington and Colorado to one senator, the counties of Harrison and Rusk to one senator, the counties of Fannin and Lamar to one senator, the counties of Red River and Bowie to one senator, the counties of Liberty, Jefferson and Jasper to one senator, the counties of Brazoria, Matagorda and Fort Bend to one senator, the counties of Robertson, Brazos, Milam and Travis to one senator, the counties of Bexar, Goliad, San Patricio, Refugio, Jackson and Victoria to one senator.

Which was laid on the table, to come up with the report of the select committee before mentioned.

In section 10, Mr. Evans moved to strike out all after the word "term" and insert "two years." Lost.

Mr. Baylor moved to strike out "four years" and insert "three years" in regard to the term of service of Senators. Lost.

Mr. Cuney offered the following, as a substitute for the 10th section:

Senators shall be chosen by the qualified electors for the term of three years, and on their being convened in consequence of the first election, they shall be divided by lot from their respective districts into three classes, as nearly equal as can be; the seats of the first class shall be vacated at the end of the first year, and of the second, at the expiration of two years, and of the third class, at the end of three years; so that one-third thereof shall be chosen annually thereafter.

Rejected, and the 10th section adopted.

Mr. Everts moved to strike out the 11th section.

Lost, and the section adopted.

In 12th section Mr. Hemphill moved to strike out the word "separated" and insert "divided." Lost.

The section was then adopted.

On motion of Mr. McNeil, all after the words "thirty years," in 13th section was stricken out.

Mr. Lusk moved to strike out "30" and insert "25 years." Lost.

On motion of Mr. Hemphill, the words "by the Congress of the United States" were inserted after the word "Constitution," in 2d line.

Mr. Everts moved to strike out the word "accepted," and insert "approval," before the words "of this Constitution," in 2d line. Lost.

The section as amended was then adopted.

In 14th section, on motion of Mr. Bache, the words "a majority of" was stricken out, where they occurred before the words "two-thirds."

The section was then adopted.

Section 15 adopted.

Mr. Hemphill gave notice that at the proper time, he would move a reconsideration of the vote striking out the following portion of the 16th section, viz: "excepting such parts as in its judgment may require "secrecy" in regard to publishing the proceedings of the Legislature.

The 16th section was adopted.

The 17th section adopted.

Mr. Van Zandt moved a reconsideration of the vote adopting the 17th section. Lost.

On motion of Mr. Clark, the word "of" in the 18th section, 1st line, was stricken out.

The section was then adopted.

The 19th section was adopted.

Mr. Hemphill offered the following amendment:

Add to 20th section "except in such cases as in the judgment of the Legislature may require secrecy."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Brashear, Caldwell, Cazneau, Cunningham, Darnell, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Jewett, Latimer of L, Lumpkin, Navarro, Parker, Rains, Scott, Standefer, Wright and Young—21.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Clark, Cuney, Davis, Evans, Forbes, Horton, Holland, Hunter, Irion, Jones, Latimer of R. R., Lewis, Love, Lusk, Mayfield, McGowan, McNeil, Moore, Power, Runnels, Smyth, Tarrant, Ochiltree, Van Zandt and White—32.

So the amendment was rejected.

The section was then adopted.

Mr. Hunter moved to reconsider the vote adopting the 14th section. Lost.

21st and 22d sections adopted.

Mr. Everts moved to strike out the 23d section.

Lost, and the section adopted.

24th section adopted.

In 25th section, Mr. Mayfield moved to strike out the following: "nor shall the members thereof [Legislature] be capable of voting for a member of their own body, for any office whatever, except it be in such cases as is herein provided for.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Caldwell, Evans, Everts, Gage, Hemphill, Henderson, Jewett, Lumpkin, Mayfield, Navarro, Tarrant, Ochiltree and Wright—13.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Bache, Brashear, Burroughs, Clark, Cuney, Darnell, Davis, Forbes, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lusk, McGowan, McNeil, Moore, Parker, Power, Rains, Scott, Smyth, Standefer, Van Zandt, White and Young—38.

So the motion was lost.

Mr. *Mayfield* moved to insert, after the word "place" the words "of their creation;" and after the word "whatever" the words "of their creation; so as to read, "be eligible to any office or place of their creation."

He said: I look upon the principle as a correct one, that the Legislature ought not to create offices, and fill them with its own members. But with regard to those which are incidental to the organization of a government or the administration of the laws, or connected with political institutions, if men happen to be members of the Legislature, I think that is no reason why they should be debarred from filling such stations, while they may possess all the virtues and qualifications which would enable them to fulfil the duties of any of those offices with honor to themselves, and great advantage to the country. By retaining the section in its present shape, the country may be deprived of the highest virtue and the most signal talents to be found in the State.

Mr. *Moore* said: I hope the section will remain as it is. It would be unwise to give the Governor the privilege of bribing the members of the Legislature. Is it not as much bribery to promise office to members as to offer them any certain amount of money? Yet it is more indirect, and the bribe is more likely to be received. Gentlemen must be aware of the uproar made in Congres a few years ago, when a law was introduced taking from the President the power of appointing any member of Congress. They might be induced by offers of office, to vote for measures, when they might not be otherwise disposed to do so.

Mr. *Mayfield* said: Perhaps the gentleman from Harris is more familiar with the past history of the country with regard to its legislation and the bribes which have been offered, than I myself can possibly anticipate. Now, sir, I think the correct rule of action to be this: to speak plainly and do what is just, without eternally warring against windmills, sins and crimes. I, for one, it is true, do not believe in the infallibility of human nature; I believe it is made susceptible to temptation and error; but I have not so poor an opinion of my fellow men as to believe that all are corrupt, and that the palms of their hands are at all times itching for gold. I believe in their frailty; I believe in their corruptibility; but I believe, too, at the same time, that a man can stand firm and immovable in his integrity, that there are men to whom the offer of a golden bribe can present no temptation. But the gentleman seems in his imagination to attach something criminal and infamous to every thing which is not guarded at all points. And must we then have these restrictions imposed to govern and rule us in after times as well as the present day. I know not, I care not what temptations may have thown themselves in the way of the gentleman from Harris. I am satisfied that my countrymen will be likely at all times to select their public servants from that class of men who possess, not only integrity, but the necessary ability and qualifications to perform the duties of any station to which the voice of the country may call them. For my own part, I am upon principle opposed to all prohibition in this Constitution, restricting the Legislature of the country in after times from the exercise of their judgment, as well in matters of legislation, as in matters of free choice where the interest of the State is involved. I am also opposed to directions being given to the Legislature. I believe that, in the next twenty-five years, those who will occupy the places which we now fill among men, will be more advanced in the arts and sciences, better skilled in political law and the principles of government, and more thoroughly imbued with all the learning which ennobles and dignifies man, than we are at the present day. Entertaining these opinions, I am against all these trammels and restrictions. I am against directing those who are to follow us; because I believe that the great land marks of freedom are laid down so plainly and so well understood upon the happy soil of America, that we have nothing to do but to leave our posterity untrammeled, and they will transmit to those who are to follow them, these republican institutions as pure and unalloyed as they receive them from us.

Mr. *Moore* said: The gentleman has admitted the very principle which I advanced. I judge of mankind for the future by the past. And we have found men here in former days who have had this itching palm for gold. I say that we must judge of the future by the past. All legislators must act upon this principle, or they will act wrong. If we are willing to place such full confidence in the honor and virtue of those who are to succeed us, there is no need of this Constitution. If all the men who are to come after us shall be honorable, virtuous and just, they will need no Constitution, and no laws. As the honorable gentleman from Fannin has stated, laws are necessary evils. Laws are only necessary because men are evil. What does all past experience tell us? I know, and that gentleman knows well, that men are as easily bribed by office as by money; and more easily, because all Americans are educated with such a detestation of the traitor Arnold, who was bribed by money, that they spurn gold whenever it is offered as a bribe.

Sir, will all the talent of the country be concentrated in our representative halls? No, sir. I say, let members fill out the terms for which they are elected, as I believe it to be their solemn duty to do. They are placed there for that purpose by the people, who believe them to be the best qualified for the station. Let other offices be filled by the citizens of the republic at large. I believe there will always be enough men to fill them with ability, and who will discharge their duties with integrity.

The ayes and noes were called for upon the amendment, and stood as follows:

Ayes—Messrs. President, Bagby, Burroughs, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Jewett, Lumpkin, Lusk, Mayfield, McNeil, Navarro, Standefer, Tarrant, Ochiltree and White—21.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Clark, Cunningham, Cuney, Davis, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Love, McGowan, Moore, Parker, Power, Rains, Scott,* Smyth, Van Zandt and Young—29.

So the motion was lost.

Mr. Everts moved to strike out all after the word "term" in 3d line.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Bagby, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Mayfield, McNeil, Navarro, Power, Smyth, Standefer, Tarrant, Ochiltree and White—19.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Burroughs, Clark, Cunningham, Cuney, Davis, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, McGowan, Moore, Parker, Rains, Scott, VanZandt, and Young—30.

So the motion was lost.

On motion of Mr. Bache, the following words were stricken out: "after the first session of the Legislature after his election and," between the words "shall" and "during," in 4th and 5th line, also the words "the remainder of," in 5th line.

The section was then adopted.

On motion of Mr. Gage, the Convention adjourned until half-past 8'clock, to morrow morning.

Wednesday morning, Aug. 13th, 1845.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

The chair announced the following committees, to wit:

Upon Everts' resolution to inquire into the propriety of dividing Texas into two congressional districts—Messrs. Everts, Young, Davis, Lewis, Horton, Caldwell and Miller.

Upon Ochiltree's resolution to supervise the several articles of the Constitution—Messrs. Ochilltree, Lipscomb, Hemphill, Smyth, Runnels, Mayfield, Henderson, Baylor and Tarrant.

Mr. Kinney, at his request, was granted leave of absence during the remainder of the session.

Mr. Mayfield, chairman of the select committee upon the subject of he apportionment of representation, reported the following as a portion of his report made on yesterday.

Until the first enumeration as provided for by this Constitution, the senatorial districts shall be as follows, to wit: The counties of Fannin and Lamar shall constitute the 1st district, and elect one Senator: Red River and Bowie, the second, and elect one Senator: Harrison, the third, and elect one senator: San Augustine and Shelby the fourth, and elect one Senaotr: Nacogdoches, Rusk and Houston, the 5th, and elect two Senators: Sabine and Jasper, the sixth, and elect one Senator: Liberty and Jefferson, the seventh, and elect one Senator: Harris and Fort Bend, the eighth, and elect one Senator. Montgomery the ninth, and elect one Senator. Robertson and Brazos, the tenth, and elect one Senator: Galveston and Bazoria, the eleventh, and elect one Senator: Washington and Milam, the twelfth, and elect one Senator: Fayette and Bastrop, the thirteenth, and elect one Senator: Travis and Gonzales, the fourteenth, and elect one Senator: Austin, Matagorda and Colorado, the fifteenth, and elect one Senator: Jackson, Victoria and Goliad, the sixteenth, and elect one Senator. the county of Bexar, the seventeenth, and elect one Senator.

After some business relating to the extra mail, the Convention, on motion of Mr. Bagby, took up the

ORDERS OF THE DAY.

On motion of Mr. Gage, the subject of the apportionment of representation in the report of the committee on the Legislative Department was taken up.

Mr. Van Zandt moved to take up the 9th section, settling the basis of representation in the Senate.

Mr. Darnell moved to go into committee of the whole on the question of representation in the Senate. Lost.

The question was then taken on Mr. Van Zandt's motion to take up 9th section, which was carried, and the original section and the substitute were read.

Mr. *Mayfield* said: It is perhaps my duty as chairman of the select committee, to state the views which I understand to have controlled the majority in submitting the substitute. There are some gentlemen upon this floor, and I frankly confess that I am one of the number, who, if it were thought practicable to carry it, although we do not wish to cast straws against the wind, would have contended for the federal basis of representation; and were this basis before us for consideration, I admit that I would vote for it. We are in favor of that basis, because we believe it calculated to guard and support one of the main institutions of this country, to wit. that of slavery ; because we believe that it would, if adopted, in all future legislation, afford a proper protection to that great interest, and in some degree present a check to those who might seek to infringe upon it, or to destroy the institution itself. Upon an investigation, however, we are induced to think, that perhaps a majority in the Convention do not entertain these opinions; and those who do, are not disposed to press their consideration. Yet at the same time, they are desirous to secure some provision, whereby the most important institution of the land may in all time to come have the necessary protection and shield thrown around it. Hence this protection was made and voted for by a large majority of the committee. Another proposition was also submitted, to base representation upon the free pupulation of the State. That proposition received the modification which appears in the substitnte offered for the 9th section: that representation in the lower house should be based upon free population, but in the senatorial branch the appointment should be made according to the number of qualified electors in the several senatorial districts. It was the view of the committee, as I understand, to present this as a medium ground upon which all parties perhaps would meet. If the proposition to adopt the federal basis is thought too strong, that to adopt the basis of free population is perhaps equally ultra: and as a medium between the two extremes, one branch at least, it is thought, should be based upon qualified electors. This, it seems to me, is just, when we look at the great interests of the country, and find that in all probability the time will come when not only serious inroads, but violent attacks will be made upon the most important institutions of the land: and when that day may come, and these attacks may be made, I think it our duty, as wise men, to endeavor as far as in our power to guard these institutions which we believe indispensable to the safety and prosperity of the State. Now I hold myself, and perhaps I may as well state it on this occasion as any other, that in the abstract, the institution of slavery is just. I hold further, that the true policy and prosperity of this country depend upon the maintenance and prosperity of that institution: for we occupy a land, the climate, soil and productions of which are of such a character as imperiously to demand, beyond all countries perhaps on the habitable earth, the employment of slave labor and slave capital. When then we look forward to the future grandeur and prosperity of our country, after the development of this land and the manifestation of its riches to the world, when our institutions shall stand proud and erect in the face of creation, then amongst others, the institution of slavery will be properly and duly maintained here, and regulated by all those human principles which experience and the great advancement of the age may demand. We occupy a country, the fertile soil of which yields a great number of the most valuable productions of the earth; one, sir, which even in its infancy, is now attracting greater attention among the people of the United States and throughout Europe, than any other upon the globe. England has expended her millions in the attempt to develope the resources of countries much more uncongenial than Texas to the production of the great staples of the world. Proper economy and wisdom in legislation are alone necessary to enable this country now and for all future times to compete with every country and every clime in furnishing the main staples necessary to the manufactures of Europe as well as the United States. When we look to our sugar lands, to our rice and indigo lands, and especially to the vast territory of this country susceptible of producing one of the main staples of the world, cotton, we clearly see that our prosperity must at all times rest upon the proper employment of slave labor and capital. When we take into consideration our geographical postition, our climate, and our soil, capable of furnishing a larger amount of exports than those of any nation upon earth, it is evidently our policy to look to the main staples of the country, and to give them proper protection and encouragement in establishing the organic law of the State. Commerce must flourish in this country only as the agricultural interest of the State is protected and fostered All the various branches of industry are wholly and entirely dependant upon the one great and permanent interest, the agricultural interest of the State. Is it not just and politic, is it not wise, then, to protect this great and permanent interest? I trust the Convention will give this most important and prominent branch of industry at least this poor protection: and that the principle established in the substitute will be adopted.

Mr. *Lewis* said he could see no good reason why there should be a difference made between the senatorial and representative branches of the Legislature. He would therefore propose to amend the substitute of the committee to the 9th section, by striking out the words "qualified electors" in 3d line and insert "of free inhabitants, Indians not taxed, Africans and descendants of Africans excepted."

Mr. *Runnels* said: I hope the amendment will not prevail. As I have before made some remarks upon this subject. I will be as concise as practicable. I hold it to be essential that in one branch of the Legislature the principle of equality in the rights of suffrage should be maintained and secured to the people. This principle, sir, is partially secured by the report of the committee: and I had hoped that there would have been a spirit of concession evinced with regard to one branch of the Legislature. If, by the voice of a majority of this Convention, representation in the popular branch is based upon free population, those who are opposed to this principle and who advocate the basis of qualified electors, must submit. But it seems to me, under the circumstances, that a spirit of conciliation should prevail, to a limited extent at least. Now, sir, if this principle with regard to the basis of representation, is carried out in both branches of the Legislature, there is no gentleman who will reflect for a moment, but will be bound to admit, that the elective franchise in one portion of the country will be disproportionate to that of another. Situated as we are, with regard to the geographical position of the country, it is demanded by the soundest principles of justice and equality, that the elective franchise should be extended to every portion of the community. It does seem to me that any objection to this basis in the senatorial branch is carrying the doctrine to the extreme. It seems to me that the basis of qualified electors is more peculiarly demanded in our country than in our sister states. We are peculiarly situated; we require and demand something of the kind for the protection of the great interests of the country. I hold it to be an indisputable fact that a principle which will give protection to the institution of slavery will operate alike beneficially upon every county in this Republic at this time represented upon this floor. This, then, being my opinion, I believed that stronger means of protection than those afforded by the section were necessary. I am still of the same opinion: but being convinced that the majority of this Convention do not agree with me, I have been disposed to abandon the position. I had no peculiar interest in advocating these doctrines, nor have my constituents, any further than those of any other gentleman. I believe the basis which I advocated necessary for the protection of the interests of the State at large; I believe its adoption would have a salutary effect with regard to the immigration of the description of property to which I have alluded. If we had a strong guarantee, even stronger than this which I contend for, by means of representation in the Senate, I believe it would induce immigration of that species of property, and add greatly to the wealth and prosperity of the country. But, sir, strip this Convention of every vestige of protection of this kind, and you leave no inducement to such immigration. Many of the slave-holding states have public domain yet unoccupied and uncultivated, and emigrants will remain there, on account of the greater security of their property. The immigration of that species of property will not only develope the resources of the country, but will enhance the value of the lands owned by individuals in this country, which, without it, must remain a drug upon their hands for half a century to come. With these views, I advocate the basis of representation as reported by the committee.

Mr. *Everts* said: I shall vote for the report of the committee. For myself. I would prefer the basis of free population; and I am decidedly opposed to the federal basis. But being disposed to yield my individual preference upon this subject, in consideration of the wishes and views of those who are anxious thus to throw protection around the institution of slavery, I, for my own part, will vote cheerfully for the proposition of the committee, and I do hope it will be adopted.

Mr. *Davis* said: I will detain the house but for a moment. I myself am opposed to the federal basis of representation. But I am willing to vote for the substitute proposed by the committee. Gentlemen have fears: I have no doubt they are honest in them, though I think it probable there is not so much danger upon the subject of that species of property as some suppose. But I am willing to concede thus much to those gentlemen. I wish it, however, distincly understood. that I am opposed to the federal basis of representation.

Mr. *Hemphill* said: In relation to the federal basis, I will say distinctly that I would be in favor of it, if it could possibly obtain. I am in favor of representing property, and especially slave property. I am in favor of it in this State in particular. I think the institution of slavery ought to be more carefully guarded in this State than in any other in the Union. But I shall vote for qualified electors, instead of population as the basis of representation here, not because I believe it will give any particular guarantee to the institution of slavery, but because, on account of our extended frontier, exposed at all times to the incursions of the Indians and perhaps hostile Mexicans, the proportion of qualified electors will be great in some portions of the country compared with population, while in those parts which enjoy peace and quiet, the number of women and children will preponderate.

Mr. *Love*, after some remarks inaudible to the reporter, proceeded as follows:

When the federal basis was originally adopted, it was thus fixed, as we know, not because there was any immediate danger that violent hands would be laid upon slavery; but because, from a knowledge of human nature, it was foreseen that the time would come when assaults would be made upon that institution. Now, I would ask, had it not been for this guarantee, would slavery have existed at this time, and the Union been preserved? It is very evident that the course of education and feeling in the Northern States, at least would have destroyed slavery, or produced a dissolution of the Union. Gentlemen do not believe that slavery is in danger in Texas, because now all have the same ideas. But the future will show. A large portion of our white population will be upon our borders in the West. And there are many sections of Texas which to-day have slaves profitably employed, that in process of time will abandon that species of labor, and at last the planting sections alone will find them profitable and useful. Take any section of the United States north of 33°, and, sir, in a few years the people will find slave-labor unprofitable. While there is no immediate danger to be apprehended, still at the same time a guard should be thrown around the institution, not only for present security, peace, and quiet, but for future protection from assault. I listened the other day to the argument of the gentleman from Liberty, and I think he is totally mistaken in the opinion that all the prominent men of the North are opposed to any war upon slavery. I do know, that even at this day the abolitionists themselves had the power in the State of New York to control the election of President. And what has been the effect upon Texas? There is no one here who does not know, that had not the abolitionists, in the freak of the moment, opposed the election of Mr. Clay, he would have been the President, and we should not be here assembled at this day. Look at the influence of education. From the time an infant at the North can lisp the word *slavery*, he is taught to abhor it; and every tale he is told, every book he reads, deepens the impression. You know that the power of such influences never leaves us, so long as life remains. It grows with our growth and strengthens with our strength. And unless we throw a guard around that institution here in the Constitution, it is destined to be entirely overthrown, with or without our consent. I think the gentleman is equally mistaken with regard to the British government. She has made war upon slavery; and for what reason? No because the institution is immoral; but because she saw that the United States was her only great rival in commerce and manufactures, and that by striking a blow at slavery in the United States, she was using the only means in her power to prostrate her flourishing competitor. As I said before, I do not believe that there is any immediate danger now with regard to this subject. But I tell you, sir, that unless we become part and parcel of the United States, ten years will not have elapsed before we shall find ourselves outvoted at the ballot box.

Gentlemen say it is the republican doctrine, that population should prevail. I deny it, sir. In Alabama they made population the basis, and why? Because there was a vast white population in some sections of the country, who had but few slaves; they had the power of numbers, and fixed a basis by which they might retain the preponderance. It was the same thing in Mississippi. How is it in Virginia? That State is divided into three districts, represented by electors. An arbitrary division was made for the protection of property, and time has shown its wisdom. Even now the State of Virginia is upon the eve of calling a Convention; several of the papers assert that slavery ought to be abolished. Go to the Northern States, there you find the principle to be in favor of protecting towns, on account of the manufacturing interests of the country.

Look at the effect upon us in the lower country, of adopting this principle of population. It operates unequally with regard to representation. Then, if you tax by the head, what do you do? My friend from Harrison said that women and children ought to be represented, because you can try them for crime. Then, if the argument is good, and if they are to be represented, they ought to be taxed by the head. Now, you give us representation according to population, and tax us according to the number of qualified electors. I do not question the power of this Convention to fix any basis the majority may choose; but power is one thing, and right another, morally speaking. I will not complain, because every man in giving his vote upon the subject, will vote upon principle, and as he thinks best for the country. But I trust they will consider how unequally this principle will operate upon us, defenceless we are at best; having no security for our slave property but the moral force arising from right, and the moral force given by the protection of law. I venture to say that Brazoria county in ten years will pay more taxes than any portion of the State of equal extent. It will be one great plantation, one great slave quarter. Let gentlemen consider another fact; that the people of that section of the country have, by the taxes they have paid, supported your government, which, but for their obedience to the laws and desire to maintain government, would have been long since literally dissolved. They have not only paid taxes upon every thing imported, but have been compelled to pay taxes upon every thing they ate. There has not been a year but every citizen of Galveston and the coast counties has been forced to pay a high and onerous tax upon every mouthful he ate, with the single exception of beef, which came from your prairies. I trust gentlemen will act upon principles of justice; though I will admit that this is a small matter at present. Let these people not have it to say, that they have been sacrificed to power, without right or reason. That will be the feeling with a great portion of the people, if you do this act, as I think, manifestly unjust towards them. I am now done with the subject, as far as I am concerned, for once and all. Though in bad health. I could not decline offering a few brief remarks upon a subject of so deep and abiding an interest to the country.

The question being on the adoption of the substitute offered by the gentleman from Montgomery,

Mr. *Moore* said: I consider the amendment applicable to the whole country; I believe that every portion of it which is now settled will be affected by it. I believe that the best interests of the country require the basis of qualified voters. It has been objected, that by adopting this, we throw out the women and children. Sir, I would do all in my power to sustain the rights of woman. Honored, ever honored be woman! If she was first to cause man to fall from his high estate, she is now first to lead him back to the Paradise he had lost. She nurtures and sustains us in infancy; she diffuses joy around us in manhood; she comforts and cherishes us in old age. I would be the last to restrict one of her privileges. I would regard all her rights as sacred. But are we doing her injury by fixing the basis contended for? No, sir. When we rest representation upon the basis of qualified electors, we rest it upon the true basis; and in so doing we represent the women and children, whom it is every man's duty to protect, aid, and support.

With regard to the little clique of abolitionist, let me tell gentlemen not to believe this clique so small, or the evil so slight as they seem to think. I have been but recently in the Northern States; I have seen the abolitionists gathered together in mass meetings; I have found them a powerful party. I have found ministers of the gospel using the pulpit as the means of giving circulation to the foulest calumnies. Six years ago, in travelling at the North, you could scarcely find one in a hundred entertaining these opinions, but in my recent tour I found great numbers opposed to me upon this subject. Sir, there is mischief to an immense extent gathering there. And it is our duty as legislators of this land, to guard well its institutions. I speak from personal observation, and I trust therefore that my intimations may be heard and regarded. The abolition journals of the North now state that they are glad Texas is annexed, because, say they, it will place the question of slavery in some degree under their control. They say, that all they have to do is to encourage emigration from the North, and they can soon out vote us. They say, as we only vote about 13,000, all that is necessary is to raise a sum of money to aid young men in moving to the country. Similar views have been openly expressed in London. Now, these evils are upon us, and it becomes the duty of our assembled legislators here to guard well our institutions against the gathering storm.

The ayes and noes were called upon the amendment, and stood as follows:

Ayes—Messrs. Armstrong of R., Bagby, Burroughs, Clark, Evans, Gage, Hogg, Holland, Latimer of L., Lewis, Lumpkin, Parker, Power, Scott, Smyth, Van Zandt and Young—17.

Noes—Messrs. President, Anderson, Armstrong of J., Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Hemphill, Henderson, Hicks Horton, Hunter, Irion, Jewett, Jones, Kinney, Latimer of R. R., Love, Lusk, Lipscomb, Mayfield, M'Gowan, McNeil, Miller, Moore, Navarro, Rains, Runnels, Standefer, Tarrant, Ochiltree, White and Wright—40.

So the motion was lost.

The question was then taken upon the adoption of the substitute.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Bagby, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Hemphill, Henderson, Hicks, Horton, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of R. R., Lewis, Love, Lipscomb, Mayfield, McGowan, McNeil, Miller, Moore, Navarro, Power, Rains, Runnels, Standefer, Tarrant, Ochiltree, White and Wright—44.

Noes—Messrs. Armstrong of R., Burroughs, Clark, Evans, Gage, Hogg, Latimer of L., Lumpkin, Lusk, Parker, Scott, Smyth, Van Zandt and Young—14.

So the substitute was adopted.

Mr. Hogg moved to strike out "19," and insert "13."

Upon which the ayes and noes were called and stood as follows:

Ayes—Messrs. Armstrong of R., Brashear, Burroughs, Bagby, Hicks, Hogg, Horton, Irion, Jones, Latimer of L., Lumpkin, Lusk, McGowan, McNeil, Parker, Power, Rains, Scott, Smyth, Standefer, Ochiltree and Young—22.

Noes—Messrs. President, Anderson, Armstrong of J., Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Holland, Hunter, Jewett, Kinney, Latimer of R. R., Lewis, Love, Lipscomb, Mayfield, Miller, Moore, Navarro, Tarrant, Van Zandt, White and Wright—36.

So the motion was lost.

Mr. Latimer of L. moved the previous question.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of J., Baylor, Bache Brown, Cazneau, Cunningham, Cuney, Davis, Everts, Forbes, Hemphill, Horton, Hunter, Jones, Kinney, Latimer of L., Lipscomb, Lusk, Mayfield, Miller, Moore, Navarro, Power, Tarrant, White and Wright—27.

Noes—Messrs. President, Armstrong of R., Brashear, Burroughs, Bagby, Caldwell, Clark, Darnell, Evans, Gage, Henderson, Hicks, Hogg, Holland. Irion, Jewett, Latimer of R. R., Lewis, Love, Lumpkin, McGowan, McNeil, Parker. Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, Van Zandt and Young—31.

So the motion for the previous question was lost.

The question was then taken on Mr. Young's motion to strike out "19," and insert "15;" and on motion of Mr. Parker, a division of the question was made.

The ayes and noes were then called on striking out "19," and were as follows:

Ayes—Messrs. Armstrong of R., Bagby, Brashear, Burroughs, Evans, Gage, Hicks, Hogg, Horton, Irion, Jones, Latimer of L., Lumpkin, Lusk, McGowan, McNeill, Parker, Power, Rains, Scott, Smyth, Standefer, Ochiltree and Young—24.

Noes—Messrs. President, Anderson, Armstrong of J., Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Forbes, Hemphill, Henderson, Holland, Hunter, Jewett, Kinney, Latimer of R. R., Lewis, Love, Lipscomb, Mayfield, Miller, Moore, Navarro, Runnels, Tarrant, Van Zandt, White and Wright—34.

So the motion to strike out was lost, and the section adopted.

On motion of Mr. Van Zandt, the 80th section, together with the substitute of the committee, were taken up.

On motion of Mr. Van Zandt, the words "entitled to separate representation," in 7th and 8th lines of the substitute were stricken out.

Mr. Caldwell moved to insert "forty-eight" between the words "hundred" and "and," in 2d line; and also in 2d line to strike out the words "not less than every four nor more than." Carried.

Mr. Brown moved to strike out the words "free population" wherever they occur, and insert "qualified electors"

Mr. *Brown* said: He believed that the general disposition of the House had been in favor of a compromise upon this subject; but the course adopted amounted to no compromise at all. He would as soon have this principle prevail in both branches as in one, if property was to be entirely excluded. He believed that in representation persons and property should be combined. This was the basis recommended by the sages and patriots and statesmen distinguished in American history; it was a principle from which we should not depart. How could we consistently support our claim to representation in the national councils for three-fifths of our negroes, if we discard the principle at home? To be able to contend for our constitutional rights under the Federal Constitution, it was necessary to preserve that principle here. He had had no idea that any thing would have been recommended so obnoxious to that portion of the House who agreed with him upon this subject. If a compromise was to be had, he had thought at least that the federal basis would have been retained in one branch, or taxation and numbers combined. He looked upon it as necessary for the preservation of our property, liable as well to be taken away by direct laws of emancipation, as by the indirect method of taxation. The members of this Convention represented people of the same opinions, the same ancestry, language and manners, and the same institutions. Slavery existed alike in every section of the country represented upon this floor; and the contingencies against which he would guard were such as would arise hereafter. The basis of qualified electors in both branches was the only thing to his mind which could even bear the aspect of a compromise. There would be no improper preponderance given to the wealthy classes. The property of this country was distributed among all classes of the community; it was in the hands of nineteen-twentieths of the population. To be secure against depredation, property must have its due share of representation in the government. There was a species of property here, which would be owned by one part of the country and not by another; a species of property which might fall under excessive taxation, as well as by a law of abolition. All the people of Texas were now interested in this institution, and would like to see a principle inserted in the Constitution, which should provide for its continuance, until time should show that there was no economy in the institution itself.

Mr. *Horton* said: Either the gentleman from Colorado or he himself was laboring under a mistake with regard to the report. He had pleased himself with the idea that gentlemen from the lower, the eastern and middle States of the country would support the substitute offered by the committee. And now, after having adopted the substitute containing the measure for which they were contending, for gentlemen to turn round and say, we do not thank you for it, or we will strike out this principle, he looked upon as hardly reconcileable with a good conscience. This was a measure in which the country was generally concerned, and he should feel himself bound to support it. He would say that he felt under obligation to those gentlemen who had magnanimously supported it in the morning, and if it should be in his power to make any return, he should feel no hesitancy in doing it.

Mr. *Lusk* said: He certainly understood it as a compromise. A few days since, when it was probable the basis of free inhabitants would be adopted in both houses, a compromise was proposed, and he understood that the friends of the federal basis were willing to put up with that of electoral voters in one house.

Mr. Darnell moved to adjourn to 4 o'clock P. M.

Lost.

Mr. *Forbes* said: Like the gentleman from Colorado, he looked upon this as no compromise at all, and not worth contending for; and so far as he was concerned, he felt perfectly willing to see a reconsideration, and representation entirely based upon free white population.

Mr. *Runnels* said: he should regret to be considered as having assented to any thing like a compromise in this matter. But he certainly thought that something had been accomplished. He had not, however, expressed a determination not to vote for the motion of the gentleman from Colorado. He felt it due to his constituents to do so.

Mr. *Anderson* said: He still entertained the same opinion with regard to the basis of representation, which he had expressed when the subject first came up. He was no party to any compromise, if any had been made, and he could not perceive any good which could result from such a course as this. He would cheerfully vote for a reconsideration, and make free white population the basis in both branches of the legislature.

Mr. *Darnell* said: Before the question is taken, I wish to refer to the position in which some gentlemen would seem to attempt to place those who advocate the principle of free population. It is argued that the interest of the slave holder, his rights and privileges, are alone to be regarded in fixing the basis of representation; that negro property alone is to be represented. Sir, have we asked representation for our horses, our cows, or other property? No sir; we seek to adopt one principle for all, and that is justice. We wish representation to be based upon the people, the white people, the people who have rights which should be regarded in a deliberative body. Now, sir, what can the legislature effect with regard to negro property? Can they say that the owners shall dispose of it, or that it shall be excessively taxed? There is no power given to the legislature to do this. Have we not declared that taxation shall be according to the *ad valorem* system? The legislature cannot tax one species of property higher than another. Why, then, do gentlemen contend that the legislature may strip them of this property? Now, Mr. President, the man who owns his horses, his cows and his oxen, is as liable to be affected by legislative action as the man who holds his negroes. You must change the constitution before you can affect the slave population of the country. And how are you to affect it? By the qualified electors. The power is not given to the legislature to abolish slavery: there is no way in which it can be done except by calling a convention. Sir, I contend that right and justice loudly demand that the population should be represented, the free white population of Texas, who claim protection at the hands of the legislature. As regards the federal basis, it is fixed by the constitution of the U. States in the Congress; but when you come to the state legislature, I ask gentlemen to point me to one state which has adopted that basis. We contend for that which we conceive to be just, proper and right. And we cannot be accused of furthering the views and policy of the abolitionists. For the constitution we are now fixing, places it beyond the power of the legislature to meddle with the subject in any manner whatever.

Mr. *Lipscomb* said: It was well known that he was dissatisfied with the basis of representation which had been adopted. But he was satisfied to support this as the best compromise which could be obtained.—He should vote *no*.

Mr. *Ochiltree* said: He wished it distinctly understood, that occupying precisely the position of the gentlemen from Washington and Fayette, he should vote *no*.

Upon which the ayes and noes being called on Mr. Brown's motion to amend, stood as follows:

Ayes—Messrs. Anderson, Bache, Brashear, Brown, Cuney, Forbes, Hemphill, Jones, Love, Miller, Power, Runnels and White—13.

Noes—Messrs. President, Armstrong of R., Bagby, Baylor, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Evans, Gage, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Latimer of L., Latimer of R. R., Lumpkin, Lusk, Lipscomb, Mayfield, McNeill, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—41.

So the motion was lost.

The section as substituted was then adopted.

On motion of Mr. Ochiltree, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.—Roll called—Quorum present.

The report of the select committee being first in order, apportioning the representation in the senatorial branch of the legislature, till the first enumeration as provided for in the constitution.

Mr. Forbes moved that the house resolve itself into committee of the whole on the subject.

Lost.

Mr. Parker offered the following amendment to the section:

"The counties of Nacogdoches and Rusk, to one senator; the county of Houston and the judicial county of Burnet, as now defined by law, to one senator. The election of senator in this district, shall be under authority of, and returns made to the county of Houston."

Messrs. *Ochiltree* and *Hogg* made some remarks indistinctly heard by the reporter.

Mr. *Parker* said: The gentleman from Nacogdoches states that the adoption of the amendment proposed by myself, would be giving a senator to Houston county, voting only 521, while the county of Nacogdoches, with so large a vote, would be entitled to but one senator. The gentleman is mistaken in his calculation. The judicial county of Burnet was taken off the upper end of Houston county, and that part of Nacogdoches lying east of Trinity up to the Fannin county line. It is represented here that there 300 voters in that part of Nacogdoches county which never belonged to Houston county. Now, sir, what is the great difference in the vote of the two districts, of which the gentleman so bitterly complains? The counties of Nacogdoches and Rusk voted for President 1000, or about that number; Houston voted 521, and the 300 votes within the limits of Burnet county, make 821. Look, sir, at other senatorial districts, and you will find much greater differences as regards the number of voters. Are there not districts which do not vote even 521, the vote of Houston county? Why, then, does the gentleman object to the division of the district? It will give convenience and satisfaction to the people.

Mr. Parker moved to lay the amendment offered by himself on the table. Lost.

Mr. Young offered an amendment to Mr. Parker's amendment, as follows:

"The county of Nacogdoches, one senator; and the counties of Houston and Rusk, one senator."

Which was rejected.

Mr. Parker's amendment was then taken up and rejected.

Mr. Cuney offered a substitute for the additional section proposed by the committee, which is as follows:

"Fannin and Lamar, one senator; Red River and Bowie, one senator; Harrison, one senator; Shelby and San Agustine. one senator; Jefferson and Liberty, one senator; Nacogdoches and Rusk, one senator; Houston, Brazos and Robertson, one senator; Montgomery, one senator; Harris, one senator; Galveston, one senator; Brazoria and Matagorda, one senator: Austin and Fort Bend, one senator; Washington and Milam, one senator; Travis and Bastrop, one senator; Fayette and Colorado, one senator; Jackson, Gonzales and Victoria, one senator; Refugio, Goliad and San Patricio, one senator; Bexar, one senator; Sabine and Jasper, one senator."

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs. Brashear, Caldwell, Cazneau, Cuney, Forbes, Hemphill, Henderson, Horton, Jones, Love, Lipscomb, McGowan, Miller, Moore, Runnels and Smyth—16.

Noes—Messrs President Rusk, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown, Clark, Cunningham, Darnell, Davis, Everts, Gage, Hicks, Hogg, Holland, Hunter, Irion, Jewett, Kinney, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Mayfield, McNeil, Navarro, Parker, Power, Rains, Scott, Standefer, Tarrant, Van Zandt, White, Wright and Young—38.

So the substitute was rejected.

Mr. Forbes offered the following as a substitute to the section reported by the committee, by striking out all after the words "as follows, to wit:" and inserting "the counties of Brazoria and Fort Bend, one senator; Matagorda, Jackson and Victoria, to one senator; Austin and Colorado, to one senator; Washington, to one senator; Fayette and Gonzales, to one senator; Bastrop and Travis, to one senator; Bexar, Goliad, Refugio and San Patricio, to one senator; Robertson, Brazos and Milam, to one senator; Montgomery, to one senator; Harris, to one senator; Galveston, to one senator; Liberty and Jefferson, to one senator; Jasper and Sabine, to one senator; San Augustine and Shelby, to one senator; Houston, Rusk and Nacogdoches, to two senators; Harrison, to one senator; Red River and Bowie, to one senator; Lamar and Fannin, to one senator."

Mr. Van Zandt moved to lay the additional section and substitutes on the table for the present.

Mr. *Kinney* said: This is to me a perplexing and irritating subject. Constant reference is made to the Western country, to its depopulated counties, to the sparseness of its votes. If gentlemen who have made these allusions had been with me for the last few years, they would not wonder at these things. These remarks have called up recollections which make me feel sore; consequently I do not like to say any thing upon the subject. I do not suppose that any remarks I could make would change one single vote. Notwithstanding that, I feel it my duty in justice to myself to say a few words upon the subject; to explain the reasons why there are not more voters in that section of the country, and why some counties which send representatives, give only five votes. Some of the members of this Convention will recollect that Refugio, a county which at the last Presidential election gave but five or ten votes, could, in 1840, have given three hundred. There were circumstances which drove this population away from that county, or which prevented them from holding the elections at the precincts established by law. With regard to the district which I have the honor to represent, I think the proposed apportionment a very unjust one. The counties of Bexar, Goliad, Refugio and San Patricio, by the substitute, are to be entitled to but one senator; and I see by the calculation that three of these counties are represented as having but ninety-two votes. Why, sir, the little rancho in which I reside can give two hundred or three hundred to day; voters, too, who have been long in the country; many of whom have fought, bled and suffered for the benefit of their country. I can state truly, sir, that San Patricio county, to-day, is able to turn out at least one thousand voters, and Refugio at least three hundred, as I am able to prove. I do not state this with the expectation of reaping any advantage from the fact. As has been said upon another question, if you take any *gentleman's word for it*, all of them have a great many voters in their respective counties. I only state facts, which I am able to prove. It is on this account I say that this apportionment is unjust. Any county situated upon the frontier, which has been obliged to fight the common enemy of the country, has had to suffer for it. Sir, in reflecting upon the misfortunes of this section, I am reminded of a story I heard not long since, of a young lady who was taken by the Indians. Her parents were very respectable, and before she was taken prisoner she had been a welcome visitor in the most fashionable circles of the country. After the lapse of one or two years she returned home; and to her very great surprise and mortification, the young ladies of her acquaintance would not come to see her; they said she had been with the Indians and had been disgraced. The misfortunes she had suffered among the Indians were not great enough, but she must be deprived of the society she had been accustomed to enjoy before her captivity. Our condition seems to be a similar one. War, pestilence and famine, we have endured; and now we are to be deprived of our voice in the councils of the country. I might go on and make many remarks, which I believe would not be uninteresting, in relation to the history of the country, but I deem it unnecessary. It will be seen, by reference to the past difficulties of Texas, that during the Indian war, the Cherokee war upon the frontiers of the East, the inhabitants of the West, who were not very numerous at the time, were the first to volunteer and go to the assistance of their brethren in putting down the Indians. In consequence of the assistance given by the Western people, the enemy was driven out of the country, and the population of that section increased to a very great extent. I do not make these observations to cast any reflection upon the inhabitants of the Eastern country. But I would only remind gentlemen, that if we had had their assistance to have driven off the common enemy, and given our people perfect security, *we* could have had a large population. I will mention one other fact. It is known to a great many persons in this Convention, that in 1835 and 1836, the town of Goliad, in the county of Goliad, contained something like fifteen hundred inhabitants. The distress consequent upon the war has driven these people away. There is not a single vote now in the town of Goliad. Is it right, because these misfortunes have fallen upon us, to take away from Goliad her representation? In Refugio, there was a population of seven hundred at the same time, which, from the same cause, was driven away from that part of the country. I ask further, if it is right that they should be deprived of their representation, in consequence of events which have benefited the East, by which a great part of their population has been forced to retire to the East, to escape being butchered by the enemy? It is the same case with San Patricio. I only make these remarks to show the injustice of taking away our rights, on account of misfortunes which we have not brought upon ourselves, and the curse of which should not fall upon our heads alone. If the East has not been able to fight our battles, she should at least show her generosity, and give us equal representation in the councils of the nation.

The motion to lay on the table was lost.

Mr. Anderson moved the previous question.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Bagby, Bache, Cunningham, Davis, Gage, Kinney, Latimer of L., Lusk, Lipscomb, Moore, Navarro, White and Wright—16.

Noes—Messrs. President, Baylor, Brashear, Brown, Caldwell, Cazneau, Clark, Cuney, Darnell, Everts, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Latimer of R. R., Lewis, Love, Lumpkin, Mayfield, McGowan, McNeill, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and Young—40.

So the motion for the previous question was lost.

The question was then taken on Mr. Forbes's substitute, which was rejected.

On motion of Mr. Jones, the section reported by the select committee, was referred to a select committee of six, to be composed of members from the eastern, middle and western portions of the country, with instructions to report to-morrow morning.

On motion of Mr. Mayfield, the committee were instructed to fix the maximum number of Senators at nineteen.

Mr. *Hogg* said: He would move another request, if not instruction to the committee, to show the number of votes in each senatorial district and county, for the information of the House.

Carried.

Mr. *Hemphill* said: He thought it would be well for the committee, if they could, to ascertain the causes why some of the Western counties had not given a larger number of votes at the last Presidential election. Refugio and San Patricio, for instance, where he attended court in 1840, contained a large, industrious and respectable population. Soon after, their property was destroyed, their women were subjected to the brutal licentiousness of the soldiery, and the men were carried off to the Rio Grande, or fled into the interior. He wished the facts to be stated, wherever it was found that the deficiency had been caused by the incursions of the enemy, when the government was not able to protect the population. He moved that the committee be so instructed.

Mr. *Tarrant* said: He had voted in the majority for the reference. From the disposition evinced by gentlemen, he now believed it would result in no good, and would move a reconsideration of the vote. He believed it would create a great deal of discussion, without answering any valuable purpose.

Mr. *Caldwell* said: I hope it will not take place, and that the further instruction proposed by the gentleman from Washington will be given. If this information cannot be obtained by to morrow, the order is peremptory to the committee to report to-morrow, and of course they will not report it. But I am satisfied that it can be obtained, and desirous that some report should be made upon the subject; for I regard it as highly necessary that this House, in making the apportionment, should ascertain what the number of voters really was at the time of the Presidential election. That would be a better criterion to go by than the actual vote given. For if the committee ascertain that in a given county there could have been three hundred votes, but for the inability of the government to extend the protection necessary to hold the elections, of course it is not the intention of this Convention to cut it off from representation. It has often been said. that a portion of country represented upon this floor and the floor of our Congress, has no voters. And why, sir? Because the forces of the government could not extend the necessary protection to the officers holding elections in that section, so that the people could approach the polls; therefore their votes have never been counted. I hope that the inquiry will be made, and that these portions of the country will be properly represented.

Mr. *Lipscomb* said: I dislike to occupy the time of the Convention; but I trust that if any instructions are given to the committee, this proposed by my colleage will also be given. One of the instructions asked for, seems to have an awful squinting towards cutting off these counties from representation. I wish the information to be obtained, so that it may be known hereafter how gentlemen have voted, and the grounds upon which they have voted. I live in a section of the country which has never been broken up at all, but near enough to the frontier to have my sympathies excited for that population, driven from their homes and never yet permitted to return; though now, thanks to the great event that has called us together, they have a more cheering prospect before them.

Mr. *Hogg* said: The gentleman from Washington, I suppose, alludes to the instructions proposed by me, as having the awful squinting of which he speaks. I, sir, have as much sympathy as that gentleman can, or ever did have for the West. I will refer gentlemen to my vote in Congress upon the bill to release a certain section from taxation. But I view this government as about to be changed into a State government, and I believe that the people have the right to be represented according to population. I believe that the United States will throw around the Western people the protection necessary to their comfort and happiness. I am as far as any man from wishing to cut them off from their due representation. What I desire is simply that representation should be given to the people of Texas according to population. If the information demanded by the gentleman from Bastrop and Washington can be procured, I shall be anxious to have it, I can then render my account to my constituents and the people of the East. But if nine counties in the West, voting only 814 votes, are to be entitled to nine representatives, and three counties in the East, voting 1355, are to be entitled to only three representatives, I have not sympathy enough in me to say that the people of Texas shall be thus unequally represented. I am willing to do any thing for the protection of that country which justice may demand. But affairs are now about to assume a different aspect; the people of that section will be protected by the United States forces. If gentlemen can show any good reason why the Western country should come in and be represented in this disproportionate ratio, I am willing to submit to it. But wishing, as I do, to see representation as nearly as possible proportioned to population, I am unwilling to see such an apportionment adopted. I may be considered illiberal, but I believe that the duty I owe to my country imposes upon me the course I shall take in this matter.

Mr. *Tarrant* said: I did not make the motion for the purpose of cutting off any information in relation to the West. I am as willing to support the Western country as any man. I am perfectly willing that we should get all the information we can, that we may act knowingly upon the subject. As the motion has opened the door for several speeches, which I did not expect, I will now withdraw it.

Messrs. Runnels, Cazneau, Moore, McNeil, Ochiltree and Tarrant were appointed the Select Committee.

Mr. *Mayfield* said: I deem myself called upon to submit a few remarks in support of the motion of the gentleman from Washington. I

I understand the question, it presents itself upon a motion of the gentleman from Nacogdoches [Mr. Hogg], to instruct the committee to submit to the Convention the number of electoral votes cast at the last Presidential election: and the motion of the gentleman from Washington contemplates that the committee should be instructed also in their report to show the condition of the depopulated counties, and the causes which have produced that condition, and the probability of an increase in their population within the next few years. Sir, is it not just that the committee should present these facts to the consideration of the Convention? Is it not highly necessary that they should inquire into these facts, these causes and results, which are not entirely in the possession of every gentleman upon this floor? I had flattered myself that upon this occasion, the particular subject now under consideration would not have been brought forward. But as it is now before us, I conceive it an act of justice to myself, and particularly to the people of that portion of the country who have suffered most and expended the greatest amount of money in the support and maintenance of the country, to present the subject in its proper light before this Convention. I hold it then, sir, to be right and proper that the committee should inform this body of those facts which every man should know. Justice demands that they should explain the causes which have produced the depopulation so often alluded to, and which has excited the sympathy of gentlemen upon this floor. I regret, sir, that it is so late in the evening that I cannot devote that time to the subject which it intrinsically merits. Sir, when we come to compare notes, when we come to look at the true history of the country, we shall find that even these depopulated counties, which have excited some degree of sympathy in the bosom of the gentleman from Nacogdoches, have contributed more in blood and treasure in sustaining the country, than those which now boast of their vast numbers. He himself comes from the midst of a gallant and magnanimous people, who have been distinguished for their chivalry at all times from the earliest day in our history down to the present period. I feel satisfied, sir, that they entertain a true and abiding sympathy for those who have battled so often and expended so much in the cause of their country. They are an honorable people. I have lived among them, and without egotism I may say, that I have joined them in the battle field. But, sir, at the same time, I would ask, if those people, and particularly those who now boast of their numbers, have contributed the most in supporting and sustaining the country? Sir, we are now entering, if I may use the expression, a great political millennium, we are adopting a great political amnesty, and forgetting the past, we are seeking to adopt such measures as will give general satisfaction to the country. And should we not give to those who have periled most and sacrificed most an equal voice until such time as they may be enabled to be properly represented in the legislative halls of their country? The West, the suffering West. I speak only my own sentiments, but in so doing, I am satisfied that I speak those of every man from the western bank of the Brazos to the eastern shore of the Rio Grande; the west asks no gratuities; she only stands up here and demands justice from the country, in conformity with her claims and the services she has rendered. When you come to trace the past history of the country, from what source has it derived its chief support? Consult the statutes of the country, look over the reports of the various secretaries of the treasury, and they will tell the tale. Consult the records of the war office, and what portion of the people have poured out their blood more freely than those of the west? It is but a few years since these sections which are now boasting their vast population were asking the protecting arm of the government to expel from among them an enemy which was depriving them of their substance, and retarding emigration and the occupation of their soil. The vast territory comprising these populous districts was not many years ago supported and sustained, not only by money advanced by the people of the west, but by the blood of some of her very best patriots. That country, then in danger, where the mother could scarce repose without pressing her infant with convulsive grasp to her bosom, now rejoices in peace, prosperity and happiness; and the west has contributed her blood and her treasure to bestow upon it these blessings. What, let me ask, has been her own condition, although her treasure has flowed as freely as the winds on the rippling brook, though the blood of her citizens has stained every prairie and savannah in that country? Has her frontier been reclaimed, have her depopulated towns been re-established? Has the great East, and I ask it without reflecting upon her people, either by money or the strong arm, driven the foe from our borders, and said to the inhabitants of the West, there is your habitation, there your home; go to it, and repose in peace and prosperity? No, sir. Up to this time, such has not been the action of this government. The west has been the constant theatre of the incursions of the enemy, either Indians or Mexicans; from the coast to your extreme North-western border, she has been constantly subjected to the marauding assaults of the foe. With all these embarrassments surrounding them, the people of this section have ever battled against the common enemy, and have paid the exactions of the government without a murmur. And now let me ask, if upon this day of jubilee and general amnesty, is it not just that this people should have some voice in the legislation which is not only to affect them but their remotest posterity? Can they not demand it as an act of justice, and not as a gratuity?

I hope, Mr. President, that the amendment proposed by the gentleman from Washington, will be adopted.

Mr. Young moved to adjourn to half-past 8 o'clock, to-morrow morning. Lost.

On motion of Mr. Ochiltree, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Thursday Morning, Aug. 14, 1845.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

The select committee, H. G. Runnels, chairman, to whom was referred the senatorial apportionment, made the following report:

Committee Room, Aug, 14, 1845.

To the Hon. Thos. J. Rusk,

President of the Convention:

The committee, to whom was referred the section reported by a previous committee, apportioning the senatorial representation among the several districts of the State, have had the same under consideration, and have instructed me to report the section herewith submitted, with due deference to the sense of the Convention in their instructions, not to exceed in number nineteen senators.

Your committee suggest, that they found much difficulty in so arranging that number among the districts, as to give satisfaction; they, consequently, have increased the number to twenty-one, and respectfully recommend its adoption.

H. G. RUNNELS,
Chairman.

Substitute.

"Until the first enumeration, as provided for by this Constitution, the senatorial districts shall be as follows, to wit: the counties of Fannin and Lamar shall constitute the first district, and elect one Senator; the counties of Red River and Bowie, the 2d district, and elect one Senator: the counties of Fannin, Lamar, Red River and Bowie, conjointly, shall elect one Senator; the county of Harrison the 3d district—shall elect one Senator; the counties of Nacogdoches, Rusk and Houston, the 4th district, shall elect two Senators; the counties of San Augustine and Shelby, the 5th district, shall elect one Senator; the counties of Sabine and Jasper, the 6th district, shall elect one Senator; the counties of Liberty and Jefferson, the 7th district, shall elect one Senator; the counties of Robertson and Brasos, the 8th district, shall elect one Senator; the county of Montgomery, the 9th district, shall elect one Senator; the county of Harris, the 10th district, shall elect one Senator; the county of Galveston, the 11th district, shall elect one Senator; the counties of Brazoria and Matagorda, the 12th district, shall elect one Senator; the counties of Austin and Fort Bend, the 13th district, shall elect one Senator; the counties of Colorado and Fayette, the 14th district, shall elect one Senator; the counties of Bastrop and Travis, the 15th district, shall elect one Senator; the counties of Washington and Milam, the 16th district, shall elect one Senator; the counties of Victoria, Gonzales and

Jackson, the 17th district, shall elect one Senator; and the county of Bexar, the 18th district, shall elect one Senator; the counties of Goliad, Refugio and San Patricio, the 19th district, shall elect one Senator."

Mr. Brown, from the select committee, to whom was referred the first section of the legislative report, made the following report:

Committee Room, Aug. 13, 1845.

To the Honorable Thos. J. Rusk,

President of the Convention:

The committee, to whom was referred the first section of the report of the committee on the legislative department of the government, with the various amendments proposed thereto, have had the same under consideration, and have instructed me to offer the following report:

The 1st section of the report, with the amendments suggested in alteration thereof, relate first to the qualification of electors, and second, to an extension of the right of citizenship. From the general aspect of some of the amendments, it seems intended to obtain from the Convention, a declaration, to be inserted somewhere in the Constitution, that a class of persons who, under the existing Constitution, and in view of the period when that Constitution will be superceded by another, will probably never become citizens of this Republic, should be made such by the ratification of this Constitution by the people.

This proposal involves a question which, if fully discussed, would require more investigation and consume more time than the short period allotted to this task will allow; but enough may be said in brief space, to demonstrate a few of the most odious objections against it.

The present position of our country is entirely new, and, in some respects, anomalous; besides, the difficulties attending the mode of acquisition resorted to by the United States.

Texas is an independent power, whose sovereignty is unimpaired, but engaged by the strongest public assurances, deliberately made, to surrender that sovereignty, on the happening of certain expected events in the Congress of the United States. Every thing conspires to cast a vagueness over positions which were clear before, and ought to inculcate the greatest caution in our proceedings. If the plighted faith of Texas is entitled to as much weight in our deliberations as her fundamental law, it would be well to inquire if there is not an obligation arising from the spirit of the contract, now resting on us, to abstain from the exercise of powers which are in open conflict with the *policy* in which we have promised to participate; and whether this restraint ought not to have commenced its effects from the time we assented to the overture, in future, to become partners in the national policy of that confederacy, as well as in its government.

Your committee are of opinion, that from the time the two republics began seriously to negociate for the union of their territory and governments—at least, from the time when the basis of the compact was reciprocately assented to, a tacit obligation has vested in each, not to interfere with the settled policy of the other; but to admit and reconcile those jarring elements already in existence, resulting from a separate organioation, and independent offices. That the most powerful treaties have to yield revolutions in government, your committe will not deny; but the abrogation of the treaty is a necessary consequence.

The proposals for annexation proceeded from the government of the United States, to a community of people whose circumstances, private and political, were clearly ascertained and defined, by its existing Constitution and laws. Should any important and objectionable change take place in the form of government, or policy, in the United States, who would contend that we were bound by our assent to its proposals, rendered before that change? and if we should make any radical alteration in ours, who would contend that the United States were bound to accept us? Because the government of the United States has not exacted, in terms, that we should make no material alteration in the form of our government, or the rights of our people, it does not follow that we are at liberty to do so: for there are principles outside of every act of legislation, and every treaty, which must form or govern its construction. These principles are universal, and every where recognized; and would form a cumbrous appendage to any article which they would apply.

But one great and necessary change was contemplated on either side, when the joint resolutions were proposed and acceded to; and the contracting parties having yielded their assent, are bound to endure all the necessary incidents to that change, and no more. By the present Constitution, all persons residing in Texas on the day of the declaration of independence, and persons who might thereafter emigrate, reside six months, and take the oath of allegiance, are citizens—as this Constitution cannot cease to exist until the government is changed; and as this is plainly implied in the joint resolutions, it follows that all who are, or may become citizens of the Republic, by the operation of the Constitution, must become citizens of the United States; and that the U. States are bound to accept us, with all privileges we have acquired under the Constitution in force when they made their overtures, and assigned a distant period for their consummation: thus far, the policy of the United States, resulting from the exercise of the power to pass uniform laws on the subject of naturalization, must be continued; to this length they have consented, but it may well be questioned whether they have consented to any more—whether they have agreed to consequences which do not result from the Constitution; but something in collision with it, and from an abuse of sovereignty about to expire. It would be well understood, that if the sovereignty of Texas had continued, such a change would not have been made; and that we were willing for a feeling to operate against the United States, which, as an independent state, we would not have allowed to operate against ourselves. It is, also, to be remembered, that naturalization is a contract of which the consent of both parties is an essential part; and that no declaration of ours can make a citizen, without his consent.

Your committee believe, that all the substantial benefits of citizens can be obtained, all dangerous questions avoided, by the plan which they will hereafter recommend, on the other subject; and that it is inexpedient and unsafe, to attempt any greater enlargement of the rights of those inhabitants.

On the other question, the qualifications of electors, your committee declare their belief, that it is among the reserved rights of the states, to constitute their own electors. It is one exercise of the right incident to citizenship to vote; but this right out of the territory of the state which confers it, as some of the other rights of citizenship do, and is no exercise of power by the state, out of its jurisdiction, as the other would be; for the Constitution of the United States makes citizenship in one state, citizenship in all.

The power to qualify electors is not conveyed to the government of the United States, or prohibited to the states, and is therefore reserved. [Art. 10, amendment Con. U. S] The same voters who elect the most numerous branch of the State Legislature, elect the member to Congress—[See Art. 1, Con. U. S]

And the federal basis of representation laid down in the 2d section, 1st article of the Constitution of the United States, includes foreigners not naturalized, in the estimate of population: it gives them representation in proportion to their numbers, and it is of no consequence to the general agents of the government, by what number or kind the electoral power is exercised in the States; your committee, therefore, recommend the adoption of the following section, as a substitute for the first section of the report and amendments thereto.

GEO. W. BROWN,
Chairman.

Substitute for the 1st Section of Legislative Report

"Sec. 1. All free male persons, aged twenty one years and upwards, (Indians not taxed, Africans and descendants of Africans excepted,) who, previous to the adoption of this Constitution by the Congress of the United States, where residents of the Republic of Texas shall be qualified electors in the county in which they may reside.

"Sec. 2. All free male persons aged twenty-one years and upwards, (Indians not taxed, Africans and descendants of Africans excepted) who are citizens of the United States, but were not residents of the Republic of Texas previous to the adoption of this Constitution by the Congress of the United States, who shall have resided in the state one year next preceding an election, and shall reside in the county in which they offer to vote, shall be qualified electors: *Provided*, nevertheless, that the right of suffrage shall not be exercised by any non-commissioned officer soldier, seaman or marine, in the service of the United States."

Mr. Everts introduced the following ordinance:

"It is hereby declared and ordained, by the Deputies in Convention assembled, that the following territory, to wit: beginning at a point where the southern line of the county of Fannin crosses the east fork of Trinity river; thence south with the meanders of the said east fork to its junction with the main fork of the Trinity; thence west to the western edge of the lower Cross Timbers; thence north to the said southern line of Fannin county; thence east along said line to the place of beginning, be, and the same is hereby created an election precinct, and shall be entitled to one representative in the Legislature of the State of Texas, until otherwise prescribed by law: said election precinct, for all other civil and election purposes, except for the survey and location of lands, shall be attached to, and be under the jurisdiction of Fannin county, until otherwise prescribed by law."

Which was laid on the table, to come up among the orders of the day.

On motion of Mr. Wright, the substitute reported by Mr. Runnels, chairman of the special committee upon the subject of the senatorial representation, was taken up and adopted, in lieu of the additional section reported by the select committee, upon the same subject, of which Mr. Mayfield was chairman.

The section as substituted, was then adopted.

On motion of Mr. Van Zandt, that portion of the report of the select committee, fixing the apportionment of representation in the representative branch of the Legislature, till the first enumeration under the Constitution, was taken up.

The substitute offered by Mr. Gage, on a previous occasion, on the same subject, was moved by him as a substitute for the report of the select committee.

Mr. *Henderson* said: I would prefer that the basis of representation should be population: but as in adopting that basis we might seem to do some injustice to some of the depopulated counties, I am willing to vote for the substitute offered by the gentleman from Rusk. I do it with the view, in some degree, of yielding to the west that influence which they seem to desire to have in the councils of the country hereafter. By giving each county one representative and fixing a high scale, we should deprive a large portion of the country of the weight to which it is entitled. If we were to take population as a basis, I would be willing to take 500 as the number; but under the circumstances, all things considered, I am disposed to fix upon three hundred. And I will say here, that the people are never dissatisfied when taxed in order to give them their due influence in the Legislature. I have never heard any people complain of paying a tax to support their representatives. They regard it as a privilege and a right to be represented, and, in some degree, equally represented. When I give the vote I do upon this question, I wish it distinctly understood that I do not claim to be over liberal. I think I shall be only giving to the west that which she is entitled to under all the circumstances. The people of that region have suffered inconveniences and hardships from the very beginning down to this day; indeed I may say, they have borne the whole brunt of the fray. Although, whenever circumstances may render it just, I shall be in favor of apportionment according to population, yet I must say on this occasion, that, in my opinion, it would not be doing justice to the west; and I have come to the determination to support the proposition of the gentleman from Rusk from the considerations I have mentioned.

Mr. *Love* said: I agree with the gentleman from San Augustine as to the disposition of the people to pay their representatives; but I think the proposed number too large. I think that sixty-six members, in biennial sessions, will not get through in sixmonths. Time will be lost in proportion as you increase the number; and for years to come it will be impossible to perform the business of the country. I think that every section of the country ought to be represented fully. But when you give every county one member, it is represented; and whether or not it shall have more, is a matter of little or no consequence. I believe the number reported by the committeee is the better one.

On motion of Mr. Moore, a call of the house was made; and, on motion of Mr. Burroughs, a further call of the house was suspended.

The question then was upon the adoption of the substitute as offered by Mr. Gage:

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Latimer of R. R., Lewis, Lipscomb, Parker, Rains, Tarrant, Van Zandt, White, Wright and Young—35.

Noes—Messrs. Bache, Brashear, Cunningham, Forbes, Hunter, Jones, Kinney, Latimer of L., Love, Lumpkin, Lusk, Mayfield, McGowan, McNeil, Miller, Moore, Navarro, Power, Runnels, Scott, Smyth, Standefer and Ochiltree—23.

So the substitute was adopted.

Mr. Scott moved to strike out, after "Gonzales," the word "two," and insert "one."

Upon which the ayes and noes were called and stood as follows:

Ayes—Messrs. Brashear, Hogg, Lumpkin, McGowan, McNeil, Miller, Moore, Scott, Smyth and Standefer—10.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brown, Burroughs, Caldwell, Clark, Cunningham, Cuney, Cazneau, Darnell, Davis, Evans, Everts, Forbes, Gage, :Hemphill, Henderson, Hicks, Horton, Holland, Hunter, Irion, Jewett, Jones, Kinney, Latimer of L, Latimer of R. R., Lewis, Love, Lusk, Lipscomb, Mayfield, Navarro, Parker, Power, Rains, Runnels, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—48.

So the motion was lost.

Mr. *Brashear* moved to strike out "one," after "Fort Bend," and insert "two." He said that this county actually polled more votes than the county of Gonzales. It was his opinion, that the people, let them live where they might, were entitled to equal political power, and equal political rights. For these reasons, and these only, he made the motion.

The motion was lost.

The vote was then taken upon the adoption of the additional section, and stood as sollows:

Ayes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache. Brown, Burroughs, Caldwell, Cazneau, Clark, Cuney, Darnell, Davis, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jewett, Latimer of R. R., Lewis, Love, Lipscomb, Rains, Tarrant, Van Zandt, White, Wright and Young—36.

Noes—Messrs. Brashear, Cunningham, Forbes, Hunter, Jones, Kinney, Latimer of L, Lumpkin, Lusk, Mayfield, McGowan, McNeil, Moore, Navarro, Parker, Power, Runnels, Scott, Smyth, Standefer and Ochiltree—21.

So the additional section as substituted was adopted.

The 26th section of the report on the legislative department was taken up.

On motion of Mr. Van Zandt, the words " or any foreign government" were inserted in 3d line, after the word "state."

Mr. Van Zandt offered the following amendment:

" And no person shall, at the same time, hold or exercise any two offices or appointments of trust or profit under this State."

Mr. Lipscomb moved to insert the word " agencies," after the word " offices."

Accepted by Mr. Van Zandt.

Mr. *Hemphill* said, he doubted the propriety of inserting as a provision in the Constitution, that a man shall hold no two offices. He thought it better to leave it as at common law, that no man should hold two offices which are incompatible. He would like to know, under this provision, whether the probate judge could act as a notary public, or whether the clerk of the probate court could act as register or clerk of the board of land commissioners? Perhaps it would take several little offices to enable a man to make a living.

Mr. *Van Zandt* said, the Legislature might assign further duties to any office; and it would not follow that the officer held two offices.

The amendment was adopted, and the section as amended adopted.

On motion of Mr. Kinney, the 32d section providing for the seat of government remaining at Austin until 1850, &c., of same report, was taken up.

Mr. Brashear offered the following, as a substitute for the section:

" The first session of the Legislature, after the adoption of this Constitution by the Congress of the United States, shall be held at the city of Austin: the qualified electors of the State, at the first election for members of the Legislature, shall, on their ballots, designate by name, such place as they may deem most eligible for the location of the seat of government of the State of Texas; and the returns of said election shall be transmitted to the Speaker of the House of Representatives, within the period of twenty days after the said election: if any one place thus voted for, shall receive the majority of the whole number of votes polled, the Legislature shall permently locate the seat of government at that place; but if no place have a majority of all the votes polled, it shall be the duty of the Legislature to provide for an alection, to be held by the first day of July thereafter; at which election, the two places which, at the previous election had received the highest number of votes, shall be put in nomination; and the returns shall be made to the Governor of the State, within twenty days after the holding of said election; and if either of the said places receive a majority of the votes given in, the same shall be the permanent seat of government of this State, until the year 1860, at which time it shall be the duty of the Legislature to provide by law, to carry out the will of the people, on the subject of the location of the seat of government after that time."

Mr. *Rusk* said, if offered as a substitute. it was out of order.

The previous question was called for.

Mr. *Moore* said, he would inquire if the section had not been adopted?

Mr. *Rusk* said, he would second the call for the previous question. This was an exciting subject; if thrown in here as a fire brand, it would cause a great deal of ill feeling.

Mr. *Jones* rose to a point of order. He would inquire whether the substitute had not been taken up and adopted by the House? If so, this is out of order.

Mr. *Brashear* having gained the floor, spoke as follows: it is with all due respect for the intelligence, patriotism and democratic pride of this body, that I beg leave to offer a few remarks touching a subject which, if not already settled by predetermination and agreement, I yet hope to see take its proper course. And I trust that gentlemen who, upon this floor have so fully and emphatically committed themselves to the broad principles of democracy, by their declamation on all popular subjects, will give practice to their professed doctrine, by referring over to the people the location of the site of government. It belongs to them, and they are fully competent to act upon and settle it, in their primary assemblies; and it will be perfectly convenient for them to do it, when voting to elect members to fill the first State Legislature. A large majority of them now expect it; they have frequently asked and demanded it, through their agents in Congress, though without success, on account of the inequality of representation. I have endeavored to direct my course here, and regulate my votes and acts, by giving strict attention to the able and learned discussions of gentlemen, whose intelligence, wisdom and experience eminently qualify them to give a neat finish to the proud superstructure which is to be the work of our hands, and which is now the object of the most profound deliberation and the deepest anxiety to this grave body. And I trust that such a tone, substance and feature may be given to this important work, as to check in all after time, all wild and reckless legislation, and guaranty to the present population of Texas the inestimable privileges of liberty and equal political power, securing the transmission of the rich heritage untarnished to generations yet unborn. The location of the seat of government so immediately affects the interests and convenience of the masses, from whom government sucks directly its subsistence, that I, for one, am willing to indulge them with the settlement of this one little solitary matter, so convenient for their action at their primary assemblies, at a time to be prescribed by their agents here. I am willing to test their capacity to suit themselves; and I believe that no person would be so impudent and suicidal as to deny, at this day, to the democracy of the land, capability for self government. A new and resplendent era now dawns upon Texas. She is passing through the ordeal of a civil revolution. She is represented on this floor by her delegates, with trust powers given them —to do what? To dispense equal political power, and to secure equal political rights to her citizens, in establishing this organic law. They have constructional or implied power, to adjust and settle such local matters for the people, as it is inconvenient for them to arrange in their primary assemblies; in such a manner, if I understand the nature and extent of this high trust, as to suit as nearly as possible their general convenience, and meet the just requirements of a majority, after having properly consulted and compromised their various and conflicting interests.

Upon what impartial or tenable grounds, can gentlemen correctly show that something should be done for the immediate relief of Austin, at the expense of the whole people? Do the people not stand perfectly assured that both former rights and former wrongs are bound to stand *in statu quo* for the time being, and that the present and future are to be provided for, and promptly and faithfully attended to? It is true that Austin has suffered in consequence of the course pursued by the government; and has not Houston likewise suffered by the reckless and faithless course of the government? The first removal certainly created a precedent for the second; and though the first desertion had neither precedent or expediency to justify it, the latter certainly had both. And have not hundreds of individuals in Texas, who perhaps never saw either Houston or Austin, and never sympathised with their unfortunately gulled citizens, their sympathies being perhaps sufficiently exhausted in their own behalf, been a little swindled, if not entirely broken up, particularly those who have fallen victims to the wily machinations of the profligate and corrupt Land commissioners? Whence did that horde of wild beasts emanate? Whence did they derive the power and authority which they so vilely perverted into a machine to swindle the world? From the government, sir. And I would further ask, if the government itself has not directly raked down numbers of patriotic capitalists, by failing to meet its engagements?

I would further ask, for the general information of the people, how the seat government came to be located at Austin? Did not the Congress of '37 and '39, after agreeing to remove from Houston, and failing to agree upon a point, modestly hand over to five commissioners the power entrusted to them, sixty in number, directly by the people, and say in substance and fact, if not in words, certainly I think without precedent: Be it enacted by the Republic of Texas in Congress assembled, that the President of said Republic is hereby ordered to convene by proclamation the next annual Congress, at such point as may be elected and established by our five chosen commissioners, to whom we, acting for the people, have transferred such plenary power as we have authority to do, to select for the people a safe and convenient place for the enactment of their laws and the transaction of their general business? And here was the chosen spot, for what reasons, or from what motives, I know not of my own knowledge. And how has it been kept here? Certainly, I think, in consequence of the distracted interests of the country, and the great inequality of representation.

Here was the chosen spot. The reasons and motives for the location I neither know nor care for. But did the move, let me ask, give satisfaction to a majority of the people? And how has it been kept here? Have one third of the people ever expressed themselves satisfied with the location? The Western members, although representing the most diminutive minority perhaps ever known in the affairs of freemen, had the shrewdness and tact to keep it here for years, against the will and the expressed wishes of the people. But in the course of events, the chief magistrate of the nation, emanating directly from, and responsible directly to the people for all his acts, did remove it. Have a majority of the people ever rebuked him for the act? If any gentleman may so think, I can only say, that there is a wide difference of opinion between us. And how was it brought back here? Perhaps partly by barter, and certainly by that well known minority representation, in which Goliad presented a bold and extended front of five against the docile one thousand tax paying freemen of Montgomery. Has not this been a subject which has agitated the public mind ever since the moment when reckless speculation and perverted contrivance placed the seat of government here? An overwhelming majority of the people loudly and sternly protested against this act, so fraught with mischief and injury to the most vital interests of the people. Is there a solitary member here who believes that a majority of the people wish the seat of government located at Austin until 1850, and then to be voted on by the people, which will consume two years more, and in effect leave it here for seven years? And if there is any force in the argument now presented, that, as the State is poor, it will be economy to hold the next five sessions in these old buildings, may it not be urged with fourfold force five years hence? Will not pride, extravagance and management, in the next five years, generate a desire for new and more stately buildings, that will cost the government twenty times the worth of these old things? Will not the people be taxed, and have to pay in the next five or seven years, some thirty or forty thousand dollars, to erect more costly and magnificent buildings, which even then will not satisfy the taste and fancy of the Western gentlemen, if we may draw an inference from data furnished here in olden times? And we all know who have to bear the burthens of the government. Now, can it be doubted that if the question is referred immediately to the people, such propositions will be made by contending points for its permanent location, that it will not cost the State one cent? If I am any judge of snakes, to locate it here for the next five years, will be in effect to rivet the location hard and fast upon the people, with all its inconveniences, against the express will of a large majority, and at a cost to them of thousands, when other points would furnish all necessary and good buildings gratuitously.

Have not the people frequently instructed their agents in Congress to remove back the seat of government from a place without the borders of the settlements and surrounded by Indian hunting grounds, to some interior point most convenient and central to the great body of the citizens to whom the government turns its face when hungry? And if it is a trivial matter to members where they meet for legislative action, as they receive mileage, is it of no importance to the people, to whose taxes it adds some thousands? What recompense and indemnity have they, for the great trouble and expense they are put to in coming here for their patents, and the risks they have run with regard to the safety of their land papers? This point is perhaps the most remote in the most sparsely populated part of Texas; a point selected by five commissioners, deputized in the most extraordinary manner, to act in behalf of the people, and speculate a little perhaps for a few. I am told on this floor that one of the commissioners, who is now no more, acknowledged, or rather voluntarily stated, that bribery was made use of in the case.

The seat of government has been removed from this place, not from base motives, not from cowardice; but because the interests of the people required it, and neither justice nor expediency justified its retention here. And whenever any important emergency has arisen in the affairs of Texas, has not the distinguished man to whom I have alluded, been always found to possess both the nerve and the wisdom to meet the crisis; and has he not been always sustained by the people? Malice and vindictiveness may hurl their shafts at him; it may be fondly imagined that he is politically immolated; but in my view he occupies too elevated a position not to laugh to scorn the impotent attempts of the would be Titans of the moment.

Mr. *Horton* said: I feel it to be a duty which I owe to myself, as one of the unfortunate individuals alluded to by the gentleman in his elaborate discourse, to ask him one question, which I hope he will answer. Is he acquainted with the law under which the commissioners acted in locating the seat of government? Perhaps he labors under the same delusion with many others in this Republic. The act appointing the commissioners, required that the seat of government should be located north of the San Antonio road. Where does that road run? From the town of Bastrop across to the town of Tenoxtitlan. We were necessarily compelled under our oaths to locate the seat of government north of that road; and if any individual can point out a more appropriate place than the one selected, I have never yet seen it. I know not what influenced the rest of the commissioners; but for my own part I know that I acted conscientiously in doing what I did. I have never repented it; and I trust I never shall. If I were to give way to my feelings upon this subject, it might create dissatisfaction and ill feeling, which I would be the last to do. I shall therefore refrain from making any further remarks at this time.

Mr. Moore moved to lay the substitute on the table.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Bache, Brashear, Evans, Irion, Love, Lumpkin, Lusk, McGowan, McNeil, Moore, Parker, Power, Rains, Scott and Ochiltree—16.

Noes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Hogg, Holland, Hunter, Jewett, Jones, Kinney, Latimer of L., Latimer of R. R., Lewis, Lipscomb, Mayfield, Navarro, Runnels, Smyth, Standefer, Van Zandt, White, Wright and Young—40.

So the motion was lost.

Mr. Hemphill moved to strike out "city of Austin," and insert "Independence."

Mr. Van Zandt moved the previous question.

Mr. Moore moved to adjourn to 4 o'clock, P. M.
Lost.

The question, shall the main question be now taken? was put and carried.

The main question being the adoption of the section without the amendments:

The ayes and noes being called stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bagby, Baylor, Bache, Brown, Caldwell, Cazneau, Clark, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Holland, Hunter, Jones, Kinney, Latimer of L., Latimer of R. R., Love, Lipscomb, Mayfield, McGowan, Moore, Navarro, Power, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—42.

Noes—Messrs. Armstrong of R., Brashear, Davis, Hicks, Hogg, Irion, Jewett, Lewis, Lumpkin, McNeil, Parker, Rains and Scott,—13.

So the section was adopted.

On motion the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.—Roll called—Quorum present.

Mr. Armstrong gave notice, that he would move a re-consideration of the vote adopting the 22d and 27th sections of the General Provisions, one in relation to exempting property from forced sale, and the other in relation to taxation.

The 27th section was adopted.

Mr. Henderson moved to strike out the 28th section.

On motion of Mr. Van Zandt, a call of the House was made.

Mr. Young moved to suspend the call.
Lost.

On motion of Mr. Moore, the call was suspended.

On motion of Mr. Forbes, the 28th section was laid on the table.

Section 29th adopted.

In 31st section, Mr. Darnell moved to strike out "four years," and insert "two years," in relation to the term of service of senators.

Mr. Forbes moved a call of the Convention.

Lost.

The ayes and noes were called on the adoption of Mr. Darnell's motion to amend, and stood as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bagby, Cuney, Darnell, Evans, Hogg, Hunter, Irion, Scott and Standefer—11.

Noes—Messrs. President, Anderson, Armstrong of J., Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Davis, Everts, Forbes, Gage, Hemphill, Henderson, Hicks, Horton, Holland, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Moore, Navarro, Parker, Power, Rains, Runnels, Smyth, Tarrant, Ochiltree, Van Zandt, White, Wright and Young—46.

On motion of Mr. Hemphill, the section was referred to the Committee on the State of the Nation.

The 28th section was then taken up.

Mr. Van Zandt moved the previous question.

The question—shall the main question be now taken? was put, and carried.

The main question being the adoption of the section:

The ayes and noes were called, and stood thus:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Cuney, Forbes, Hemphill, Hicks, Hogg, Horton, Irion, Jewett, Latimer of R. R., Love, Lusk, Lipscomb, Miller, Rains, Runnels, Smyth, Ochiltree and Van Zandt—28.

Noes—Messrs. President, Bagby, Clark, Darnell, Davis, Evans, Everts, Gage, Henderson, Holland, Hunter, Jones, Latimer of L., Lewis, Lumpkin, McGowan, M'Neill, Moore, Navarro, Parker, Scott, Standefer, Tarrant, White, Wright and Young—27.

So the section was adopted.

In 33d section, Mr. Moore moved to strike out "three," and insert "two"—(per diem pay of members of legislature.)

A division of the question being called for, the question on striking out was put and lost.

Mr. Forbes moved to strike out "three," and insert "two."

Mr. Young moved to amend, by inserting "four."
Lost.

The ayes and noes being called on Mr. Forbes's motion, stood as follows:

Ayes—Messrs. Anderson, Cuney, Evans, Forbes, Irion, Latimer of L., Lipscomb, Moore and Scott—9.

Noes—Messrs. President, Armstrong of J., Armstrongof R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Clark, Cunningham, Darnell, Davis, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Jewett, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, McGowan, McNeil, Miller, Navarro, Parker, Power, Rains, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Wright and Young—44.

Lost.

Mr. Brown moved to amend, by inserting "three dollars per day for forty days, and no pay thereafter."

Mr. Parker moved to strike out "forty days," and insert "sixty days."
Lost.

The ayes and noes being called on Mr. Brown's amendment, stood as follows:

Ayes—Messrs. Baylor, Brown, Burroughs, Evans, Forbes, Moore and Power—7.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Bagby, Bache, Cazneau, Clark, Cunningham, Cuney, Darnell, Davis, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McNeil, Miller, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White, Wright and Young—44.

So the motion was lost.

The section was then adopted.

Mr. Gage moved to adjourn until half-past 8 o'clock, to morrow morning.

Lost.

The 1st section of the report, together with the substitute reported by the select committee, Mr. Brown chairman, was taken up.

Mr. Love moved to lay the section and substitute on the table.

On motion of Mr. Irion, the Convention adjourned until half-past 8 o'clock, to morrow morning.

Friday, Aug. 15th, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Cunningham filed the following protest to vote given heretofore given, adopting the 31st section of the legislative department.

Austin, August 14, 1845.

The undersigned having voted against the 31st section of the Constitution relating to the legislative department of the government, establishing the number of representatives in the first legislature of Texas, and apportioning the same among the respective counties, begs leave to respectfully to protest against the adoption of the said section for the following reasons:

1st. The large number of the representatives will necessarily subject the people of the western portion of the country—already impoverished; by their patriotic efforts to support and maintain the independence of the country, to an onerous tax, from which they ought, if possible, to be relieved.

2d. The apportionment of the representatives among the respective counties is unjust and injurious to the rights and interests of the people of the western portion of the state, inasmuch as it deprives them of their due weight in the legislation of the state, by changing the constitutional apportionment in the legislature of the country.

This infringement of a right, so dear to freemen, is justified solely on the ground of a partial depopulation of that country by the ravages of a desolating war.

The undersigned can recognize no principle of justice, patriotism or humanity, which would warrant this body in depriving any portion of the people of this country, of this inestimable right by reason of the vicisitudes of fortune, over which they could exercise no control. Especially when it is recollected that the inhabitants of this portion of the country have, for the last eight years, borne all the burthens of a war, almost unaided by their government. That they have paid a tribute for the support and maintainance of that government, in blood, treasure and personal service, which, in proportion to their numbers and means, is unprecedented in the history of modern republics.

That the depopulation of their country has been caused by a sacrifice of life in defence of their country, and by reason of a direliction of duty, neglect or inability of the government to protect them in the enjoyment of their homes. That the widows, orphans and heirs of those who have fallen in battle, and been driven from their homes, claim the same interest in the soil which was owned by their husbands, fathers and friends, now the undersigned believes, that whenever they have wandered, or been driven, their voice should be heard in the legislature of the state, and that voice should be for the protection of the local interests of the homes hallowed to them by the blood of their kinsmen.

The undersigned, therefore, believes, that the old constitutional apportionment should be preserved until full protection is given to the western frontier, and ample time for those driven from their homes, to return to them—actuated, however, by a liberal spirit of concession, he was willing, by way of compromise, to adopt the provision reported by the select committee through its chairman; he would, however, consider himself recreant to the interests of his constituents, and of the people of western Texus, were he to depart further from the rule which a sense of justice dictates to him.

A. S. CUNNINGHAM.

Mr. Horton moved a reconsidertion of the vote given yesterday, adopting the 28th section of the legislative department.

Mr. *Standifer* said: he wished the reconsideration for the purpose of striking out the two first lines, which say, that preachers, by their profession, are dedicated to God, and have the care of souls. He wished gentlemen to recollect what we say. Do we mean, said he, the immortal part of man? If so, we should say what we think. I deny that any mortal man has any thing to do with that immortal part. Preachers are like other men. All are of like passions; all like ease, honor and money, and none can make one hair white or black.

The motion was lost.

The select committee, to whom was referred the resolution enquiring into the expediency of dividing Texas into two congressional districts, (Mr. Everts chairman,) made the following report:

COMMITTEE ROOM, Aug. 15th, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

The committee to whom was referred the resolution of the convention to enquire into the propriety of dividing Texas into two congressional districts, agreeably to the act of Congress of the United States, of 1842, upon that subject, in order to elect two representatives for the State of Texas, until the year 1853, beg leave to make the following report:

That the act of Congress above alluded to, does, amongst other things, require, that each state shall be laid off into as many congressional districts, as the same may be entitled to representatives in the Congress of the United States; and your committee believing, and being fully persuaded that Texas, under the ratio fixed by said act of congress, is entitled to two representatives in the Congress of the U. States, until an apportionment be made under the census of 1850, have proceeded to divide Texas into two congressional districts, in such manner as to give as nearly as possible, an equal number of qualified voters to each district, and in conformity thereto have instructed me to report the following

ORDINANCE:

It is declared and ordained by the Deputies in Convention assembled, that all the territory comprised within the limits of the following named counties, shall comprise the first congressional district of the State of Texas until after the next appointment, and shall elect one representative to the Congress of the U States, to wit:

The counties of Fannin, Lamar, Red River, Bowie, Harrison, Shelby, Jefferson, Jasper, Rusk, Sabine, San Augustine, Liberty, Houston, Nacogdoches and Galveston.

All the territory comprised within the limits of the following named counties, shall compose the second congressional district of the State of

Texas, and shall elect one representative to the Congress of the United States, to wit:

Brazoria, Fort Bend, Matagorda, Jackson, Victoria, Austin, Colorado, Fayette, Gonzales, Travis, Bastrop, Washington, Bexar, Goliad, Refugio, San Patricio, Milam, Brazos, Robertson, Montgomery and Harris.

All of which is respectfully submitted.

G. A. EVERTS,
Chairman.

Which was laid on the table to come up among the Orders of the Day.

Mr. Bache offered the following resolution:

Resolved, That a committee of be appointed to wait upon the President of the Republic of Texas, to consult with him concerning the transfer of the government, by the Convention, from an independent republic, to a Republican State government.

Which was laid on the table for one day, according to the rule.

On motion of Mr. Gage, the Convention took up the

ORDERS OF THE DAY.

The first section and substitute of the select committee on the legislative department, being first in order,

Mr. Love offered the following as a substitute for the substitute of the select committee, (Mr. Brown chairman:)

"Every free male person who has attained the age of twenty-one years, and shall be a citizen of Texas at the time of the adoption of this Constitution by the Congress of the United States, (Indians not taxed, Africans and descendants of Africans, excepted,) shall be deemed a qualified elector, and be entitled to vote in the county, city, town or district where he may actually reside.

Those who may not be citizens of Texas at the time of the adoption of this Constitution by the United States, when they have attained the age of twenty-one years, and shall have resided in the state twelve months, and six months in the county, city, town or district where he offers to vote, shall be deemed a qualified elector. Those who have resided two years in the state and three months in the county, shall be entitled to vote in any county, city, town or district where he may actually reside. After the acceptance of this Constitution by the U. States, the Legislature shall provide by law the manner in which foreigners arriving in the state, after its adoption as one of the U. States, and who may not be naturalized under the laws of the United States, shall exercise the right of suffrage in all elections for state officers. Provided, nevertheless, that the right of suffrage shall not be exercised by any non-commissioned officer, soldier, seaman, or marine in the service of the U. States."

Messrs. Everts and Wright made some remarks in oppposition to the substitute proposed, and Messrs. Love and Lusk in its favor.

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs. President, Armstrong of R., Bagby, Burroughs. Cunningham, Cuney, Darnell, Davis, Gage, Henderson, Hogg, Holland. Irion, Jewett, Jones, Latimer of L., Lewis, Love, Lusk, M'Neil, Miller, Parker, Power, Rains, Scott, Smyth, Standifer, Tarrant, Ochiltree and Young—30.

Noes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brown, Caldwell, Clark, Evans, Everts, Forbes, Hicks, Horton, Hunter, Latimer of R R., Lumpkin, Mayfield, McGowan, Moore, Navarro, Van Zandt, White and Wright—22.

So the substitute was adopted.

Mr. Mayfield offered the following substitute for the substitute of Mr. Love:

"Every free male person of the age of twenty-one years, who shall be a citizen of the U. States, or who at the time of the adoption of this Constition by the people of Texas, shall be a *bona fide* inhabitant of Texas, or at the final action of the Congress of the U. States thereon, and shall have resided the last six months in the county, city, town or district in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified elector, and entitled to enjoy all the rights, immunities and privileges of citizens of this state, under such disabilities as are otherwise provided for in this Constition, and the Constitution of the U. States."

Mr. Rusk moved to strike out the clause in Mr. Love's substitute, in relation to the legislature providing by law for those who may not be naturalized under the laws of the U. States.

Which motion prevailed, and the clause was stricken out.

The ayes and noes were then called on the adoption of Mr. Mayfield's substitute, and were as follows:

Ayes—Messrs. Anderson, Bache, Caldwell, Cazneau, Evans, Everts, Horton, Howard, Hunter, Lipscomb, Mayfield, Navarro and Power—13.

Noes—Messrs. President, Armstrong of J., Armstrong of R, Bagby, Baylor, Brashear, Brown, Burroughs, Clark, Cunningham, Darnell, Forbes. Gage, Hemphill, Henderson, Hicks. Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, M'Gowan, McNeil, Miller. Moore, Parker, Rains, Runnels, Scott, Smyth, Tarrant, Standefer, Ochiltree, Van Zandt, White, Wright and Young—42.

So the substitute was rejected.

Mr. Van Zandt moved the following substitute for Mr. Love's substitute:

Every free male person of the age of 21 years (Indians not taxed, Africans and descendants of Africans excepted) who is an actual resident and inhabitant of Texas, at the time of the approval of this Constitution by the Congress of the U. States, or who, after the adoption of this constitution, shall be a citizen of the United States, and shall have resided six months in the county or district where he may offer his vote, shall be deemed a qualified elector and entitled to vote for members of the legislature and other officers of the district or county in which he may reside; provided no officer, soldier, seaman or marine, in the army or navy of the U. States, shall be entitled to vote.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of J., Baylor, Bache, Brown, Clark, Evans, Everts, Forbes, Hemphill, Horton, Howard, Hunter, Lipscomb, Navarro, Power, and Van Zandt—17.

Noes—Messrs. President, Armstrong of R., Bagby, Brashear, Burroughs, Caldwell, Cazneau, Cunningham, Darnell, Henderson, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Mayfield, McGowan, McNeil, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White Wright and Young—37.

So the substitute of Mr. Van Zandt was rejected.

Mr. Gage moved to strike out 'non-commissioned,' before 'officer,' in Mr. Love's substitute.

Lost.

Upon which the ayes and noes were called on the motion.

The Chair decided that the ayes and noes could not be called for after the decision of the Chair.

Mr. Gage appealed from the decision of the Chair, and upon the question being put, the Convention sustained the decision of the Chair.

Mr. Van Zandt moved to strike out 'non commissioned officer,' and insert 'officer.'

A division of the question was called for, and the question upon striking out was put.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Baylor, Bagby, Burroughs, Clark, Cunningham, Everts, Forbes, Gage, Hogg, Horton, Hunter, Irion, Latimer of R. R., Lusk, McNeill, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Wright—27.

Noes—Messrs. Armstrong of R., Bache, Brown, Caldwell, Cazneau, Hemphill, Henderson, Hicks, Jewett, Jones, Lewis, Love, Lumpkin, Mayfield, McGowan, Miller, Moore, Navarro, Parker, Power, Rains and Young—22.

So the motion prevailed, and the words were stricken out.

On motion of Mr. Anderson, the Convention adjourned until four o'clock, P. M.

4 o'clock, P. M.

Convention met pursuant to adjournment.

Mr. Love's substitute being under consideration—question before the Convention (non commissioned officers being stricken out,) was Mr. Van Zandt's motion to fill the blank with 'officers.'

Which motion prevailed.

Mr. Love moved to strike out the whole proviso in the substitute offered by himself.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Brashear, Cunningham, Evans, Hunter, Jewett, Love, Lusk and Miller—8.

Noes—Messrs. President. Anderson, Armstrong of J, Armstrong of R., Bagby, Baylor, Bache, Cazneau, Clark, Cuney, Darnell, Davis, Everts, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Irion, Latimer of L., Latimer of R. R., Lewis, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Van Zandt, Ochiltree, White and Wright—38.

So the motion was lost.

Mr. Van Zandt moved to strike out "'service' in the substitute, and insert 'army and navy.'

Which motion prevailed.

Mr. Rusk offered the following as a substitute for the substitute offered by Mr. Love:

"Every free male person of the age of twenty-one years and upwards, (Indians not taxed, Africans and descendants of Africans excepted,) who shall be a citizen of the U. States, and shall have resided in this state one year previous to an election, and in the county or district six months, shall be a qualified elector. This provision, however, shall not apply to the first elections under this constitution; but all free male persons, (Indians not taxed, Africans and descendants of Africans excepted,) who may reside in Texas at the date of the adoption of this constitution, and who shall be 21 years of age, shall be entitled to vote in the first election: Provided that no officer, soldier, seaman or marine, in the land or naval forces of the United States, shall be entitled to vote for any county, district or state officer."

Mr. *Love* said: I do not exactly understand the meaning of the substitute offered by the gentleman from Nacogdoches. It is not a matter of much importance to me what is adopted: but I understand the meaning of the section to be this: that a person who is a citizen of the United States, and shall have resided in the state one year, may vote at the next election, but that one who is not a citizen of the U. States, cannot vote at the next election. I wish the rule to be adopted, that any person who may be in Texas at the time of the acceptance of our Constitution by the U. States, shall have the right to vote. I should like to see Europeans placed in precisely the same situation in this respect, as citizens of the U States. The latter are foreigners to us, just as much as the Englishman, the Russian or the Dutchman—there is no difference. I think it right that all persons who shall be actually in Texas at the time of the adoption of this constition, should be placed upon the same footing. I may, however, be mistaken, with regard to the operation of the section.

Mr. *Baylor* said: I think the proposition easy to be understood, and I cannot myself see any great objection to it. The first section embraces the class of cases arising after the adoption of the Constitution, and our re-organization as a State.

In order to avoid every difficulty at the first election, the proposition is made, as I understand it, that every one twenty-one years of age, residing here at that time, no matter from what country, shall have the right to vote at the first election; but that in after times, none but citizens of the United States shall have the right to vote, and that they must undergo a residence of twelve months. This, it seems to me, leaves things exactly where they should be; it leaves it with the General Government to naturalize our citizens in the same way as every where else.

Mr. Rusk said: It seems to me that the substitute explains itself. [Substitute read.] It is necessary, or seems to be thought necessary, to define the qualifications of electors. It has been contended that the State has the right to qualify such electors as she may see proper; but the question arises, whether, in qualifying our electors, we had not better pay some little attention to the naturalization laws of the United States. If I understand the section myself, it provides that all persons who shall be residents of Texas on the day of the adoption of this Constitution shall be entitled to vote at the first election. I do not think there is any necessity of explanation so far as that goes. Then, at subsequent elections, it requires individuals to be citizens of the United States, and residents in Texas twelve months, and in the county or district six months previous to the election. Now, this seems to me not only a plain, but a necessary provision. It will be recollected that there is now a high state of excitement in the United States upon the subject of the naturalization laws. I am the last man to say that foreigners should be excluded from any privileges or rights; but at the same time I am not willing, in order to show an excess of zeal upon the subject, to come into conflict with the Constitution and laws of the United States. According to our present Constitution and laws, individuals who desire to acquire citizenship, have nothing to do but to come here, reside six months, and take the oath of allegiance. If an individual, then, previously to the adoption of our Constitution, comes here with the *bona fide* purpose of settling in the country, and commences a compliance with the provisions of our laws, which are held out to him as necessary, and resides here six weeks, or six months, and before he can take the oath of allegiance to the government, we have destroyed that government by our own act, we cannot then turn round, and taking advantage of our own act, make him an alien. His rights having begun to vest at the moment of his settling here, if we do an act in our governmental capacity which puts it out of his power to comply with the requisitions of the Constitution, he becomes to all intents and purposes a citizen; and being a citizen of Texas, I contend that when we go into the United States, he must become at once a citizen of the United States. Then, by adopting this section, we shall be doing no injury to any body. If, however, we strike out the proposed provision, and require a residence of twelve months only, without any citizenship whatever, and without any oath to support the Constitution of Texas or the United States, could not a German prince who had resided one year in Texas, vote, without being a citizen of the United States, and whilst owing allegiance to a foreign government? If so, I should be unwilling to adopt such a principle. It seems to me that this provision will interfere with the rights of no one. It extends to many individuals a privilege, in fact, in the first election, which they would not now enjoy under the Constitution of the Republic; because if they have been here but three days previous to that election, they will be entitled to vote If this is illiberality, I never understood the term. Then, sir, the other provision seems necessary. This Constitution of course will have to go through a different ordeal; it will be examined with particular care. And in view of our large colonization contracts, and the agitation upon the subject of the threatened influence of foreign population, when the United States sees that we have paid no attention to her Constitution and naturalization laws, and have inserted here an article of this kind, which we cannot alter, except by a very tedious process, it seems to me it would have a bad appearance. No one will be injured by the provision as it now stands; and in seeking to please a few individuals, we might prejudice the interests of the entire mass.

Mr. *Van Zandt* said: I believe that the position which I occupy upon this subject is different from that of many of the members of this body. It is broadly asserted here that every individual in the Republic, who is a citizen at the time of the adoption of our Constitution ot the United States, will then become at once a citizen of the United States. I have listened to the various arguments upon the subject, and have yet to see the first line of authority which goes to establish that principle. I have great confidence in the constitutional opinions of the gentleman from Nacogdoches, great confidence in his legal abilities, and I had hoped that in the course of discussion he would have given us some reason or stated some authority for his assertion. The treaty made with France, in 1803, provided that those who were citizens of Louisiana, or subjects of that government, should at the "earliest day practicable" be admitted to all the rights of citizens of the United States, and should, "in the mean time" be protected in person and property. Now, I wish to know what is meant by this term, "mean time"? It is contended by gentlemen, that by the treaty for the cession of Louisiana, *ipso facto* the citizens of that territory were made citizens of the United States. I say, sir, that treaty can bear no such construction; but evidently contemplates a period between the admission of the country into the Union and the admission of the inhabitants to the rights of citizenship. I will give another reason why they were not so admitted by that treaty. The Constitution of the United States says that Congress shall have the power to pass uniform rules upon the subject of naturalization. I would ask the Convention to bear that in mind. In a case reported in 3d Dallas, the courts decided that the right to pass naturalization laws is exclusively vested in the Congress of the United States. Now, I would ask if the treaties for the acquisition of Louisiana and Florida were made by

Congress. They were made, sir, by the President and Senate. I would ask if a treaty which should attempt to make those people citizens, would not have been unconstitutional? I say that the treaties of 1819 and 1803 did not make the inhabitants of those territories citizens of the United States. And now, sir, does annexation have that effect? Is there any thing in the Joint Resolutions to induce such a belief? Can you make an inhabitant a citizen by implication? I hold that naturalization is to some extent in the nature of a contract between the government and the party, who must himself consent. How, then, do you propose to ask the consent of those who would not otherwise be citizens, to this contract of naturalization? Could you try an individual in this situation, an European, for instance, for treason? He would ask you to point him to the oath of allegiance where he had sworn to support the Constitution of the United States. True, he emigrated to Texas, but with no view of becoming a citizen of the United States. Can you force him against his will to become a citizen of any country out of which he was born? I present these difficulties; I am not satisfied about them, and I hope that gentlemen may be able to obviate them. In going into the United States, we have two or three different classes of citizens. The native born citizen, going back, regains his citizenship. Those of another class, born in Texas, by the extension of the laws of the United States over the country of their birth place, are at once considered citizens of the United States. There is another class, who have emigrated from other foreign countries, and have become naturalized citizens of Texas. With regard to these there is a question. The case of North Carolina has been referred to. It was said, that when North Carolina accepted the Constitution, her citizens thereby became citizens of the United States. This is true, and why? North Carolina was a party to the compact, one of the original parties. But suppose North Carolina had been a foreign government, the case, then, I think, would have been very different. There is another class, of foreigners coming in, in whose case the six months will not perhaps have expired before we are admitted into the Union, and they will not be entitled to citizenship. The gentleman tells you they may vote at one election. But I ask if they are not excluded from the second? And what is the policy which admits them to the first, and excludes them from the second and all subsequent elections until they shall have resided five years in the United States, and taken the oath of allegiance? It seems to me, sir, that if gentlemen will take into view the naturalization laws, they must see that no act of this Convention can make a man a citizen of the United States.

Mr. *Lipscomb* said: As this is a question upon which it seems lawyers differ as to the constitutional effect of annexation, I hope the Convention will not deem it intrusive in me, if I occupy their attention but a few moments. I do not intend to make a speech, but simply to express my opinion with regard to the legal effect of annexation. In the first place, I will take up the position of my friend from Harrison. He says, that if annexation made citizens of the United States all who should be citizens of Texas at the time of the adoption of our Constitution, it would be violating a decision of the Supreme Court of the United States; that if a naturalization law were to have this effect, it would be repugnant to the decision of the Supreme Court, declaring that the right to pass laws upon that subject is vested in Congress alone. Now, I would ask him to show me any part of this Constitution, any provision in it, which directs the mode of naturalization? Admitting to the full extent the position he has assumed, let me ask him, with whom did the Congress of the United States propose to act? With the people of Texas, sir. The Congress of the United States proposed that if the people of Texas should accept the terms of their Joint Resolutions, they should go into the Union as one of the independent States of the Union. Did they make any reservation? Did they extend that proposition only to such as were native born citizens of the United States? No, sir. For aught that appeared, the government of the United States was treating with those who had never been citizens of the United States, treating with the people of Texas. And there is nothing in the Constitution of the United States which would prohibit Congress from naturalizing in this way, admitting that Congress alone can naturalize. I consider, Mr. President, the Resolutions and terms upon which we go into the Union to be strictly a contract. They have every ingredient of a contract; the parties to which are the United States on the one part, and the people of Texas on the other part; the subject matter is the annexation of this country to the United States. Here is every ingredient of a contract; and when we accept the terms and go into the Union, I have no doubt at all that every citizen of Texas, by the very fact of going into the Union will become a citizen of the United States. The gentleman has challenged us to produce authorities; he may well do so here, in this wilderness, where there are no books. I can only, on the present occasion, refer to one case, that of a man born in Havana, who settled in Louisiana. Antonio settled in Louisiana at an early date, and moved to Mobile before Louisiana was admitted into the Union as a State. In Mobile he was offered as a juror, and challenged on the ground that he was not a citizen. The challenge was over-ruled, and the case was taken to the Supreme Court of Alabama, and there over-ruled, on the ground that no act on his part was necessary to constitute him a citizen, as the mere transfer of the government had made him such. If the Louisiana Reports were here, I could find this principle pervading the whole, with regard to citizens of Louisiana. Where is the instance in which one of these old inhabitants has been required to take the oath of allegiance? Many of them have been senators; many have held high offices; and all and every one of them were received as citizens, from the mere fact of their having been citizens of Louisiana at the time of the cession. It has been so, too, in Florida. No one of the citizens of Florida at the time of the treaty, has had his citizenship questioned; but they have been entitled to all the rights, and have exercised all the privileges of citizens of the United States. But I do consider our case as a much stronger one; because it is a contract which the United States held out to the people of Texas, and which that people had to approve of. There is one difficulty which occurs to me in the proposed substitute. There will be a description of persons voting at the first election who are not citizens of Texas, not having resided long enough in the country. I for one am willing to allow that class of persons to vote at all State elections throughout all time, and would propose an amendment embracing that object. Still, I am not clearly satisfied that those who have been in the country so short a time should not be required to undergo some state of probation. As a large number of this class might come in, however, I am willing to vote for this amendment. If I could see the difficulty which the gentleman from Harrison imagines, I would vote against the substitute, every part of it. For I would not for a moment say that the gentlemen from Bexar and Refugio should take the oath of allegiance before they could vote. But I believe that no such difficulty exists. I believe that by the act of transfer they do become citizens to all intents and purposes. With regard to the treaties in relation to the acquisition of Louisiana and Florida, if the gentleman would look farther, he would see the intention to be that the inhabitants were to become citizens at the time of admission, but under a *territorial* government, and as soon as convenient to be admitted into the Union as an independent State.

Mr. *Rusk* said: The broad position is laid down, that the citizens of Texas, when we go into the Union under the Joint Resolutions. are not citizens of the United States, unless they were so originally.

Mr. *Van Zandt* said: The gentleman makes it a little too broad. I stated that natives of the country, I was satisfied, would be citizens of the United States.

Mr. *Rusk* continued: Then, sir, it seems to me, so far as the United States government is concerned, that a man born in Texas while a foreign country, is just as much a foreigner as a man born in the Emerald Isle. The gentleman's position, whether he will or not, carries him precisely to that point. The United States are now about adopting Texas as a State of the Union, with all the guaranties of a State. The Resolutions propose that. Then if we come in as a State, is not every citizen here a citizen of the United States at once? Let a man have been born upon the soil of Texas, in Ireland, England, or Russia, if he is a citizen of Texas, I think the position is unassailable, that the moment the compact under the Resolutions is complete, he then becomes a citizen of the United States. That government is here treating with us as a separate, distinct and sovereign government. The argument of the gentleman from Harrison leads him into another dilemma. The very act of annexation, according to his view of the subject, will make a large class of persons aliens in the very country where they are now citizens. And if they are aliens, they cannot hold land, in fact they have no rights at all. Now, sir, to maintain a position so absurd as this, it seems to me the authority should come from the other side. The United States is not treating with us as individuals, but as a community, and when we go in, we go in as a community; and all the rights which we have as citizens, we shall enjoy when we go into the Union, with the single difference of being in a *State.*

Mr. *Van Zandt* said: I wish to say a few words in answer to one argument. I ask the gentleman where does he go to find native born citizens of the Republic of Texas? Where were they born? Perhaps in the Spanish dominions, and they have lived perhaps under the Mexican government, and we now find them citizens of the Republic of Texas. Suppose Texas admitted into the Union as State, and the citizenship of the gentleman from Bexar to be called in question. I ask the gentleman from Nacogdoches, what he would say if called upon to testify whether he was a native citizen of the United States? He would say, perhaps, that he was born in San Antonio. Where is San Antonio? It is in one of the western States of the United States; he is therefore a native of the United States A man may be, perhaps, in some cases, an alien in his native land. Two years ago, I felt myself considered an alien in my native land, but I should consider the gentleman from San Antonio as occupying a different position; he is a citizen of his native land.

Mr. *Henderson* said: I entertain a different opinion upon this subject from that of the gentleman from Harrison. I hold that every man who is a citizen of Texas at the time of the adoption of this Constitution, will be thereby made a citizen of the United States. If this were not the fact, this state might be placing itself in a most extraordinary position. I would ask the gentleman from Harrison what position this country would be in, if it were made up entirely of natives of Ireland, and the United States should pass such resolutions as they have passed, for our admission as a separate state, and we should accept the terms and be admitted into the Union? What would be our position, if there was not a single man in the country who was a citizen of the U. States? Then according to his position we should have a whole community forming a portion of the Federal Union, exercising all the privileges of a sovereign state, or at least acting in concurrence with the other states, and yet this portion of the community would be aliens to the country. Is not this strik [illegible] the fallacy of the gentleman's opinion? I cannot myself see the slightest distinction between the gentleman from Bexar and the gentleman from Refugio, when we are admitted into the United States. I say, Mr. President, that, according to my understanding of the matter, both of those gentlemen will be as much citizens of the United States as you or I. I take it too, sir, that this position does not conflict with the naturalization laws of the United States. For if Congress has the right to pass naturalization laws, and has the right to admit new States, cannot that body, in admitting a new State, pass a naturalization law extending over that whole country? When we are admitted into the Union, we must be admitted to all the privileges which the citizens of other states enjoy. If there is a foreigner here, he is not only an alien to the United States, but an alien to Texas.

When we look at the debates which took place in the Convention that formed the Constitution, we shall find this very question there discussed. It was proposed to make a distinction between the admission of states formed out of territory then included within the limits of the confederacy and that of those without those limits; it was proposed that the act of a bare majority of the members of Congress should be sufficient in the former case, and that the consent of two thirds or three-fourths should be required in the latter. But this proposition was voted down, with a view to the admission of Canada into the Union. Now I would ask how the gentleman would reconcile the proposition which the Convention would have occupied in the event of the admission of Canada with his own? Perhaps not one in a hundred thousand of the people were natives of the United States. Would he say that this country should be admitted as a state, and its people to the exercise of all the privileges of a state, except that of being called citizens of the U. States? How could this be? And in what a position would this state place itself, if the doctrine of the gentleman from Harrison were correct?

As I take it, this is a contract between the people of the U. States on the one part, and the people of Texas on the other. And we stand precisely in the position occupied by North Carolina or any other State of the Union before the confederacy was formed. It will be recollected that North Carolina came in some time after the adoption of the present Constitution. There was a confederacy in existence, of which North Carolina formed no portion. Will the gentleman say that the people of that State were aliens? Will he say that they were not admitted upon the same terms upon which we are admitted into the Union? For though we propose to go in at this late period, I can see no difference as regards the terms of the compact and political privileges between the admission of North Carolina then, and that of Texas now. His doctrine, if correct, would exclude a large number of the citizens of Texas from the enjoyment of the privileges which they now possess: it would make them aliens to the world, where they have renounced their allegiance to other countries, and have become citizens of Texas. How would this result accord with natural reason and natural right? How the gentleman arrives at the distinction between the natives of Ireland, here citizens of Texas, and the natives of Texas, I am at a loss to comprehend. Are they not all, sir, equally aliens to the United States?

So far as regards the treaty for the acquisition of Louisiana, I can see no authority there for the gentleman's position; I can see nothing in contradiction to the views which I entertain, in looking over the provisions of that treaty. The clause to which he referred, if I recollect it right, is evidently intended to guaranty to the people of Louisiana the right of admission into the Union, not as citizens, but as a political body, at a future day, as soon as convenient, to be admitted to the enjoyment of all the privileges of the citizens of other States. It does not say that at a future day, they should be *made citizens of the United States.* This case has no application here. We are not admitted as a territory, but as a State. I cannot see any reason to doubt that every man who is a citizen of Texas on the day of ratification will become a citizen of the United States.

On motion of Mr. Rusk, Messrs. Henderson and Baylor were appointed as a committee to wait on the Hon. E. Allen, Secretary of State, and invite him within the bar of the Convention.

The question was then taken by ayes and noes on the adoption of the substitute offered by Mr. Rusk, which were as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Henderson, Hogg, Horton, Jewett, Jones, Lewis, Lumpkin, Lipscomb, Moore, Navarro, Parker Rains, Runnels, Smyth, Standefer, Ochiltree, White and Young —28.

Noes—Messrs. Bagby, Bache, Brashear, Brown, Burroughs, Cunningham, Cuney, Forbes, Hemphill, Hicks, Hunter, Irion, Latimer of L., Latimer of R. R., Love, Lusk, Mayfield, McGowan, McNeil, Miller, Power, Scott, Tarrant, Van Zandt and Wright—25.

So the substitute was adopted.

Mr. Mayfield offered an amendment, to come in after "qualified electors:" "shall be entitled to and enjoy all the rights, immunities and privileges of citizens of this State. under such disabilities as are provided for in the Constitution of this State and that of the United States.

Mr. *Brown* said: I am aware that the house must be very weary, and in all the debate which has taken place, I have taken but very little part: but my views upon this subject are so totally dissimilar to those which I have heard expressed by any one person, that I will crave the indulgence of the Convention to submit them. I have not a doubt that every person in the Republic who is a citizen according to our Constitution and laws, whether born upon the soil or made such by the law, will by the act of annexation be made a citizen of the United States. But I doubt the power of this body to declare that any persons will be made such, who are not now citizens of this country, or would not be citizens by our Constitution and laws. With regard to the first position, if any other proof is necessary or illustration wanting, the Constitution of the United States gives us the power to elect members of Congress. Now, members of Congress must have been residents for a certain number of years in the United States. And we cannot elect representatives or senators, when a term of years is required, unless we are made citizens by the act of annexation. We have our selection of the whole population, and the whole must be citizens. The power of naturalization vested in the United States' Congress, as I believe, has nothing to do with this question, and ought not to be introduced into the debate. The question of citizenship is one upon which we should first decide. It is declared by the resolutions that we shall be admitted as a *State*. If I understand the matter, we are to be admitted upon an equality with the thirteen States which sanctioned the Constitution. I believe that all who are citizens here before the adoption of the Constitution, will be citizens of the United States; but I do not believe that every person domiciled here will be a citizen. This Constitution is to be formed by the people of this Republic. What people? As I understand it, by the people who are qualified to adopt it. I do not go to one extreme or the other. My position is simply this: that our Constitution must continue in force until we are annexed, unless we do some act to suspend its operation, and that all the rights which mature under that Constitution will be good under any change of government; and I believe I might go further; but I doubt the policy of it; I question the good faith of it. I do not think it would be best or proper here to make those citizens who would not be made such in accordance with the Constitution and laws of the United States. In listening to the opinions and arguments of some gentlemen upon this subject, one would think that members were making speeches against annexation. According to them, a large portion of our citizens may be thus indirectly stripped of all their rights and privileges. I care not, sir, whether a man was born in Mexico, India, or the South Sea Islands, if according to the Constitution he is a citizen of Texas, in my opinion he will be a citizen of the United States. A person born upon the soil, indigenous to the soil, to use such a word, by the operation of universal law, always in force unless there is some special municipal law repealing it, is a citizen. There is another class, those who have sworn to bear allegiance to the country, whose naturalization has been authorized by the laws. Beyond these I will not go with the principle. It is true we might declare all persons who are resident here citizens. But it might be well questioned whether we should act in good faith in doing so. It might be asked if we had not taken some advantage of our position. Our acts will come under a very close scrutiny, and this course might savor of unfairness, and perhaps defeat the very object of the labors in which we are engaged. I, sir, will support any declaration that those who, prior to the adoption of this Constitution, are citizens of the Republic, shall be citizens of the United States; but beyond that I will not go, directly or indirectly.

Mr. Mayfield withdrew his amendment for the present, to enable Mr. Ochiltree to offer a substitute.

Mr. Ochiltree offered the following as a substitute for the substitute offered by Mr. Rusk:

"At the first elections held under this Constitution, every free man of the age of twenty one years, who shall be a citizen of the Republic of Texas at the time of the acceptance of this Constitution by the Congress of the United States, shall be deemed a qualified voter.

In all succeeding elections, every free man of the age of twenty-one years, who shall have been a citizen of the Republic of Texas, or shall be a citizen of the United States, and shall have resided twelve months in the State, the last three months thereof in the county or district in which he offers to vote, (Indians not taxed, Africans and descendants of Africans excepted,) shall be deemed a qualified voter: Provided, that no officer of the regular army, soldier, seaman or marine, in the service of the United States, shall be authorized to vote.

On motion of Mr. Mayfield, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Saturday, Aug. 16th, 1845,
Half past 8 o'clock, A. M.

The convention met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Jones, the Convention took five hundred copies additional of the "New Era," for this week.

On motion of Mr. Van Zandt, Mr. Clark was excused from attendance on the Convention, on account of sickness.

On motion of Mr. Burroughs, the Convention took up the

ORDERS OF THE DAY.

Mr Ochiltree's substitute for the first section of the Legislative report, being before the Convention, on motion of Mr. Cazneau, was laid on the table for the present.

Mr. Bache's resolution to appoint a Committee to wait on his Excellency the President of the Republic, to consult with him concerning the transfer of the government, &c., offered on yesterday, was taken up.

Mr. *Moore* moved to lay it on the table.

He said: I know the object in view is to establish a Provisional Government to supplant the present. And I am unwilling thus to call upon the President, immediately upon his arriving from a tedious journey, indisposed and fatigued as I believe he is. I believe that every motive of policy should induce the people to retain the present form of government and the nationality of Texas, until that period when we shall have the final assurance of merging that nationality in the great Union of North America. If we rashly and indiscreetly part with our existence as a nation, we place ourselves in the dependant situation of a territory; we throw off the treaty making power, and cut off all our treaties now established with the nations of the earth, placing ourselves at the beck and under the control of our enemies in the United States. There is a strong party there, as gentlemen are well aware, who state positively that they will not only meet our Constitution upon the floor of Congress, but will bring the question before the Supreme Court of the United States, and endeavor to defeat us there. Shall we then, I would say, thus foolishly cast off our nationality; shall we show ourselves so humble, so submissive, as to be willing actually to crawl *sub juga*, as a conquered country, into the American Union? No, sir, let us stand as a band of freemen should, let us stand to the last by the independence which we have won by our valor, which has been sealed by the blood of many of our noblest and bravest patriots. Let us prove, that as that valor has secured us the admiration of the world, so our wisdom shall command its respect. Mr. President, in this matter, our steps should also be directed by motives of prudence. We have already ascertained that we shall require for the expenses of the government, an amount varying from fifty to one hundred thousand dollars. Cut off the revenue of the country, and what is the result? Are we not now told that large importing houses in Philadelphia, New York, and Baltimore, are about to ship large amounts of goods, which would replenish our exhausted treasury? It is not improbable that they would contribute to the treasury a sum not less than one hundred and fifty thousand dollars. It is ascertained that the revenue derived from the port of Galveston alone, during the last quarter, amounted to fifty thousand dollars. It is reasonable to believe, that as this revenue will be immensely increased, the treasury will receive within the next quarter, from the various custom houses, from one hundred and fifty to two hundred thousand dollars. What will be the result? The treasury will be filled; the expenses of the government as now established will be paid; and the surplus will be sufficient to sustain it for the next year, or perhaps two years. Then the taxes of your country may be light; immigration will be encouraged, and by the end of a year or two, the increased number of emigrants and amount of wealth introduced into the country, will yield a sufficient income without oppressing the people with taxes. If we take this step, on the contrary, and by our vote here sweep away the Government, what will be the result? I have been warned already, that the merchants of my section have entered goods under protest, doubting whether we are still an independent republic. If this position is once assumed, and we admit that we are a territory of the United States, by tha decision we preclude ourselves from the right of sustaining custom-house officers, and I believe the people will rise and declare that they will no longer submit to these exactions. The revenue will be thus cut off; our nation, instead of commanding the respect of other nations, will only excite their pity. If our enemies in the United States succeed, and two or three have been elected adverse to us, perhaps one vote may defeat us in the Senate, upon the resolution as submitted by President Tyler, and we shall then have to depend upon the treaty making power. But if we retain the Government and the President, we can then immediately form a new treaty under the propositions of Mr. Benton. And there is no question, but in a year or two more, public opinion would be so overwhelming in sustaining Mr. Polk, as to carry even a treaty through the Senate.

Mr. *Bache* said: I had no other motive in offering the resolution than that of showing the respect which I thought due from this body to the President. I had no intention to conjure up ghosts or hobgoblins, and no idea of crawling into the United States. I think I am the last man in this Convention to entertain such an idea. I thought it a matter of courtesy that the President should be consulted upon this subject. It has been in agitation some time, and the reason given for delay has been, that the President was not here. I have been looking out daily for him, as from the general understanding among members, I thought it necessary for him to be here. At the same time, for my own part, I hold all plans in abeyance, until their correctness shall strike my mind, without being governed by the wishes or opinions of any individual.

Mr. Young offered the following as a substitute for the same resolution:

Resolved, That a committee be appointed to confer with his Excellency the President on such subjects connected with the business of the Convention, as he may think proper to communicate through them.

On motion of Mr. Van Zandt, the resolution and substitute were laid on the table.

Messrs. Hemphill and Hogg were appointed a committee to wait upon his Excellency the President, and invite him to a seat with the President of the Convention.

On motion of Mr. Cazneau, the report of the Legislative Department was again taken up.

The first section and the substitute being before the Convention,

Mr. *Horton* said: I rise with some diffidence, Mr. President, to offer a few remarks in relation to the motion which I propose to make. It will be recollected that the section now under consideration has been four days before this body, and if I mistake not, this is the fifth. Gentlemen have certainly had time to come to sound final conclusion upon the subject. If they have not done so, I would ask, how long it will take? I fear that some of us, when we go home, will be exactly in the same situation as a member of my acquaintance in Alabama, who was noted for making but one speech, and that was all for the *people.* When we go home, our constituents may ask us, why has your body been so long in session? "Why, on account of the smart men you sent there, to make long speeches; I did the best I could for the people, God bless them, how I love them!" I fear it will be asked of most of us, when we go home, why tarried ye so long? We read in the good old book, that Job was sorely afflicted, that he was one sore from the crown of his head to the sole of his foot. After having lost all his property and his children, he was urged to denounce his maker. He cried out, No, the Lord gave, and the Lord hath taken away; blessed be the name of the Lord. But I don't think Job was ever a member of a Convention; I believe he never had that trial. I know, sir, that some individuals are firmly persuaded that it is a duty incumbent upon them to present either an amendment or a substitute for the first section of the bill now before the Convention; they feel that it is a duty they owe to their constituents. For these individuals I have the highest respect, and would do anything for them which I consistently could do. But I feel it a duty incumbent upon me as a representative of the country, to bring the question to a decision as quickly as possible; for I think five or six days long enough to contend about one single position. I will, in conclusion, call for the main question, and I hope the House will sustain me. I trust it will not be looked upon as illiberal. I would not do it under ordinary circumstances; but I believe we have received all the light upon this subject, which gentlemen are capable of throwing upon it.

Mr. Evans moved to lay the section and substitutes on the table.

The chair decided the motion out of order, during the pending of the previous question.

From which decision Mr. Evans appealed, and the chair was sustained.

The question—shall the main question be now taken? was put;

Upon which the ayes and noes were called and are as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Cunningham, Cuney, Darnell, Davis, Hicks, Hogg, Horton Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, McNeil, Miller, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, White, Wright and Young—38.

Noes—Messrs. President, Anderson, Caldwell, Cazneau, Evans, Everts, Forbes Gage, Hemphill. Henderson, Hunter, Love, Lipscomb, Mayfield, Navarro, Power and Van Zandt—17.

So the motion was carried.

The main question being the adoption of the 1st section, the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Bagby, Baylor, Bache Brashear, Brown, Cazneau, Cunningham, Cuney, Darnell, Davis, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Moore, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, White, Wright and Young—44.

Noes—Messrs. Anderson, Burroughs, Caldwell, Evans, Everts, Forbes, Love, Mayfield, Navarro, Tarrant and Van Zandt—11.

So the section was adopted.

Mr. Caldwell offered the following as an additional section, to come in as section 2d:

At the first and all subsequent elections held under this Constitution, all male emigrants to the Republic of Texas, of the age of twenty-one years, at the time of the acceptance of this Constitution by the Congress of the United States, shall be deemed a qualified voter, after a residence of six months.

Mr. *Caldwell* said: It is intended to cover the case of those who may have emigrated here in good faith, and would, under the laws of the republic be entitled to hold lands and to enjoy all the rights of citizenship after a residence of six months. I think the denial of these privileges under this Constitution, is a hardship which we have no right to impose upon them. Foreigners from Europe would have to go through a residence of five years, before they would be entitled to the rights of citizenship, or even to hold land. As this case is not provided for under one section, I propose to do it in another.

Mr. *Ochiltree* said he trusted the Convention would not be turned into a manufactory of citizens.

Mr. *Cunningham* thought the case already provided for.

Mr. *Hemphill* said: The whole will be construed together. The first section will stand for itself, and this for itself for the benefit of those to whom it relates. I think this would not be manufacturing citizens; it only makes these persons qualified voters. I think we ought to go further, and give them the right to hold land. I do not know whether aliens will have the power to hold land or not, under this Constitution. I think that those who come here at this time under the guaranties of our Constitution, ought to have conferred upon them the privilege of voting, and the right to hold land. They might not have the right to hold office, because not citizens of the United States till they are naturalized; but we can extend to them the right of voting. I am not in favor, however, of extending the right of voting to any emigrants from Europe after the adoption of our Constitution by the United States. The country might be filled up with foreigners, and the elections controlled by persons not owing allegiance to the United States.

Mr. *Ochiltree* said: I look upon the amendment as of a dangerous character, and I call upon this Convention to look at it well. If this Constitution shall be adopted on the 1st day of January, 1846, by the provisions of this section, an individual who arrives here on the 31st day of December, 1845, will be entitled to vote, while he who arrives on the 2d day of January following, if from the United States, will not be entitled to vote until after a residence of twelve months. If 3,500 emigrants from Germany arrive by the 31st day of December, they will be entitled to all the privileges of citizens, while 500 emigrants from Kentucky or Tennessee, arriving on the 2d of January, will have to remain twelve months. Is there any justice or expediency in this? I think not. I do not want our elections to be controlled by foreigners, who may vote at the command of two or three individuals. I want them to serve a noviliate. I, for one, am not willing to clothe them at once with all the powers of native born citizens.

Mr. *Mayfield* said: The gentleman contends that it would be a great hardship, if a class of foreigners, arriving here on the 31st day of December, should be entitled to vote after a residence of six months, while a Kentuckian or Tennesseean, arriving on the 2d of January, would have to remain twelve months. Now, sir, let us take the other side of the question. A Kentuckian or Tennesseean arrives here on the 2d of January. He comes to the country to identify himself with its toils and struggles; he comes with his family to make it his home and abiding place. An emigrant from Europe sets out with his wife and children for precisely the same purpose, leaving his home and kindred to reside in Texas and identify himself with the country. Both arrive on the 2d day of January, according to the supposition in relation to the time of final action upon this Constitution. What then is their relative political position? The Kentuckian or Tennesseean is allowed to vote in six months after his arrival, while the European will have to remain for the long period of five years before he can vote. Where then is the hardship? But this is not the great question before the Convention. The object which I have in view, in common with my friend from Bastrop, is to extend an act of justice to those who come here in good faith, from whatever clime or soil they may come, before the great political jubilee which is to take place upon the annexation of Texas; to secure to them all the rights and immunities of citizens of the State. So far as our present government is concerned, an individual emigrating from the United States is as much a foreigner in this country, as the man that comes from Europe, or any other part of the world. I will offer an amendment, which, I think, will secure the object.

Mr. Mayfield offered the following amendment, which was accepted by Mr. Caldwell:

And entitled to and enjoy all the rights, immunities and privileges of citizens of this State, under such disabilities as is otherwise provided for in this Constitution and that of the United States.

Mr. *Ochiltree* said he would ask the clerk to read an abstract from the Picayune, stating that a colony of 15,000 Swiss were about to leave their homes and settle in Texas this fall.

Mr. *Caldwell* read a statement that about 20,000 souls were about to emigrate from Kentucky and Tennessee this fall, to settle in Texas.

Mr. *Evans* said: I happen to know districts of country where there are hundreds of voters who have been here six months, and have not been here twelve months. And it strikes me that we are disfranchising hundreds of as good citizens as there are in the Republic. I was willing to adopt the section, provided we should incorporate a clause in the Constitution. I care not where or in what form, saving the right of these citizens, as also of all foreigners now in the country, or who may come in before the acceptance of our Constitution. I have no fear of the difficulties which the gentleman from Nacogdoches seems to anticipate, as resulting from foreign immigration. I have never seen a German, an

Irishman or Scotchman, who was not as good a republican as the gentleman from Nacogdoches, myself, or any body else.

Mr. Armstrong of J., offered the following as a substitute for Mr. Caldwell's additional section:

Every free male person of the age of twenty-one years (Indians not taxed, Africans and descendants of Africans excepted) who were residents in the Republic of Texas on the 4th day of July, 1845, shall be deemed a qualified elector of this state.

He said: My reasons are these:—In the first place, I think the section, as offered by the gentleman from Bastrop, will conflict with the naturalization laws of the U. States. It will entrench and encroach upon the prerogatives and jurisdiction of the U. States Congress. To qualify an individual to vote, is, in my humble conception, one of the powers reserved to that body. With regard to the next point, I think it will be necessary for this House to fix some period from which to date the rights of persons in this country. Then I will ask this house if there will be any hardship to those individuals who have arrived in this country after the 4th of July, 1845. It is well known that the progress of annexation commenced in the U. States last March. The passage of the resolutions by the Congress of the U. States, was notice to all the world of the pendency of this contract. It was known by all, that any person coming to Texas after that time would risk the rights of citizenship, which he might have expected to acquire. And when we come down to the acceptance of the terms by the Republic of Texas, the contract was certainly then notice to all the world, that from that period emigrants to Texas could not look for any advantage so far as the rights of citizenship are concerned. It was known by all, that the government was now about to change its form, and be merged in that of the U. States: No one could be surprised, or deprived of any privileges. The people of Texas, when they adopted the resolutions of the Congress of the U. States, did thereby consent to bury their national existence, and so far as the will of the nation was concerned, changed their government, and set about the work of framing a constitution for a state in the confederacy. Any individual coming here after the 4th of July, would come informed of the progress of annexation, and would know what he had to expect. Then, I say, that the 4th of July is a proper time to fix, from which to date the rights of individuals in this country. Individuals coming at this time, are not deprived of any privileges, but come as emigrants to the U. States. But all who have come previously, in good faith, should be provided for. Those who come after the period referred to, come with the intention of perpetrating a fraud upon Texas and the U. States, if they claim citizenship by the act of our reception into the Union. They place themselves in the situation of persons intending to take advantage of circumstances, instead of having a claim upon the attention and favor of this convention. It is not necessary, however, in my opinion, to require any thing of those who come in good faith while the country had one citizen as an independent government, except that they should have been residents of Texas, on the 4th day of July, 1845. The six months will have elapsed before the action of the U. States can be had, and they will be citizens, as if they had remained that length of time in the Republic, and had taken the oath of allegiance.

Mr. Lipscomb moved to amend by striking out 'the 4th of July, 1845,' and insert 'acceptance of this constitution by the people.'

Lost.

The question was then taken on Mr. Armstrong's substitute and rejected.

Mr. Brown offered the following as a substitute for Mr. Caldwell's additional section:

At the first and all subsequent elections to be held under this constitution, all free male persons (subject to the exceptions, and possessing the other qualifications required by the foregoing sections) who shall have emigrated to this Republic prior to the approval of this constitution by the Congress of the United States, shall be entitled to hold lands and exercise the right of suffrage.

Which was rejected.

The ayes and noes being called, on the adoption of Mr. Caldwell's additional section.

Mr. *Forbes* said: I should be very glad to vote for the principle embraced in the first part of the section, but I cannot vote for the latter part. I shall, therefore, vote *no*.

The ayes and noes stood as follows:

Ayes—Messrs. President, Anderson, Bache, Burroughs, Caldwell, Cazneau, Davis, Evans, Everts, Hemphill, Hunter, Jewett, Love, Lusk, Lipscomb, Mayfield, Miller, Navarro, Power, Van Zandt and White—21.

Noes—Messrs. Armstrong of J., Armstrong of R., Baylor, Bagby, Brashear, Brown, Cunningham, Cuney, Darnell, Forbes, Gage, Hicks, Hogg, Jones, Latimer of L., Lewis, Lumpkin, McGowan, McNeil, Moore, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Wright and Young—32.

So the section was rejected.

Mr. Everts offered the following as an additional section to come in after the first section:

All free male persons over the age of twenty-one years (Indians not taxed, Africans and descendants of Africans excepted) who shall have resided six months in Texas before the acceptance of this constitution by the Congress of the U. States, shall be deemed qualified electors.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the additional section offered by Mr. Everts.

The ayes and noes being called, stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of J., Bache, Brown, Burroughs, Caldwell, Cazneau, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Hunter, Jewett, Lusk, Lipscomb, McNeil, Moore, Navarro, Power, Runnels, Smyth, Tarrant, Van Zandt and White —27.

Noes—Messrs. Armstrong of R., Bagby, Baylor, Brashear, Cuney, Darnell, Davis, Hicks, Hogg, Horton, Holland, Irion, Latimer of L., Lewis, Lumpkin, Mayfield, McGowan, Miller, Parker, Rains, Scott, Standefer, Ochiltree, Wright and Young—25.

So the additional section was adopted.

On motion of Mr. Wright, the article on the legislative department was ordered to be engrossed for a third reading.

On motion of Mr. Everts, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment—roll called—quroum present.

On motion of Mr. Darnell, the Convention took up the special report of the committee on the legislative department, to whom was referred an additional section to come in after the 6th section of the General Provisions.

The question then was upon the adoption of the following proviso, as reported by the committee:

Provided, that nothing in this section shall be so construed as to effect the claims of persons, against the Republic heretofore existing.

Which was adopted.

The section as amended was then adopted.

The report of the judiciary committee on the 18th section of the judiciary department, together with the substitute offered by a majority of said committee in three sections, and the substitute of the minority was then taken up.

The substitute of the minority of the committee being before the Convention,

Mr. *Armstrong* said: Taking into consideration the difficulties attending the subject, the minority of the committee feared that the section offered might defeat itself; and instead of becoming a perfect rule of action, might become a mere rule of contradiction, calculated to become odious and to work a great deal of injury. I am in favor of a community of property, provided we were able to adopt it here in its perfection, and to give the man and wife equal rights. I would have voted for the section first recommended by the report of the committee on General Provisions, because it was so shaped as to leave it to the Legislature to establish the system, only requiring it to be done upon the principle of a community of property. It took up the policy alone which was to be attained, and left all the minutes to the Legislature. I object to the one just read, among other reasons, because it refers to the law of the country, when the principle which it is intended to perpetuate, should have been incorporated without reference to any statute. It differs from either the civil code of Louisiana, the civil laws of Spain, or the common law, or any rule which I know any thing about. I do not believe there can be a system built up by it which will do perfect justice. The section offered by the minority secures the right of married women beyond all possibility of a doubt. It protects the wife's property which she brings into the marriage, and that which she obtains by gift, devise or descent during the marriage, and afterwards secures to her one-third of all the property. This is better than the law referred to, reserving to her her lands and slaves. I am also opposed to the section proposed, because we have already adopted in the General Provisions a section which reserves so much property from execution or forced sale. If all this is not sufficient to secure the rights of woman, I am not able to tell what is, unless we attempt to legislate upon the subject in detail.

Mr. *Hemphill* said: If the report of the minority be adopted, the effect will be to make an essential change in our laws, with regard to marital rights. Under the provisions of our present laws, the lands and slaves, owned by either party before marriage, or acquired afterwards by gift, devise or descent, continue the separate property of the husband or wife, as the case may be, while all other property, whether owned before or acquired after marriage, is made common property, to support the expenses, and be applicable to the use, benefit and purposes of the conjugal partnership. The first portion of the section introduced by the minority, enlarges the rights of the wife, in relation to her separate property to the extent in which they were enjoyed before the introduction of the common law—but it avoids all allusion to the property held in common by the husband and wife, or the recognition even indirectly of the existence of community property, under the laws of Spain, in force in this republic until 1840, all the property of every description, owned by either party before marriage, or acquired afterwards by lucrative title, remained the separate property of the partners respectively. But under that system of laws, provision was made for the application of certain portions of the separate property of both husband and wife, together with all the property acquired after marriage, by onerous title to the support of the marriage. The *date*, on the part of the wife, and the *arras* by the husband, were intended for the purpose. A material alteration was effected in the rights and property of husband and wife by the law of 1840, regarding marital rights. The parties may now, if they think proper, enter into ante-nuptial stipulation. They may for instance change any portion of their respective properties for the use of the community—but should they fail or decline to do so, the law itself renders all that property (except lands and slaves) which formerly belonged to the partners separately, liable for the maintainance, uses and debts of the marriage. The object of the majority—the effect of the provisions introduced in their report, is to make no alteration in the respective proportions of separate and community property. The law in that respect, as it now exists, is quite satisfactory. If a change be desirable, the one recommended by the minority is highly objectionable, as it does not contemplate, or at least recognize, the existence of any common property. That the convention might fully understand the law now in force on the subject, and the effects resulting from the adoption of either of the sections reported by the majority or the one offered by the minority of the committee.

Mr. Hemphill proceeded to read and comment on the third and fourth sections of the 'act to adopt the common law of England to repeal certain Mexican laws, and to regulate the marital rights of parties,' approved 20th January, 1840. He then contended that by the adoption of the sections recommended by the majority, the interests of the husband would not suffer, while the condition of the wife would be ameliorated, and her rights ascertained and secured. Under the common law, the husband and wife are but one person; the very being as legal existence of the woman is suspended during marriage. By our law, they are considered distinct persons, at least so far as their estates or property are concerned. This essential distinction in the condition of the parties in the conjugal relation is derived to us from the Spanish law, in which ample provision was made for every relation or contingency by which the property of the matrimonial partnership could be affected.

This system has been abolished, and all the regulations pertaining to the subject, have been swept off.

The chasm has not yet been supplied by laws sufficiently minute in detail to embrace all the incidents requiring control—and one of the objects of the majority of the committee is to enjoin it upon the legislature to supply the deficiency by the passage of the necessary laws, so that the rights, duties and obligations of both husband and wife, in relation to their property, may be clearly defined and established.

Let them, for instance, establish, with more precision, the power of the husband over the property of the wife. By our present law the husband has the sole management of the lands and slaves of the wife. True, he is bound to support the wife and her children from the proceeds of her lands and slaves. But in case where the property which is held in common, furnishes the most ample reasons for the support and education of the family, the husband might now apply the whole proceeds of the wife's property to the improvement of his separate estate, or to any other purpose for his exclusive benefit. The disposition of the proceeds of the wife's estate should, to some extent at least, be regulated by law.—The husband should not have such absolute control as to enable him to seriously injure or destroy the estate of the wife by wasteful expenditure or fraudulent mismanagement. Under certain circumstances, to be pointed out by law, she should have the power of controlling her own property or of appointing a trustee for that purpose. Under the common law, where property is settled in trust for the use of the wife, it is rarely the case that the husband is selected as trustee, or permitted to control the estate. There are only instances of the many circumstances which will constantly arise in relation to marital rights, that have not been provided for, but for which an adequate remedy should be afforded.

The section offered by the majority also provides that where the survivor of the marriage is in necessitous circumstances, a suitable provision shall be made for his or her relief out of the estate of the deceased. Under the Spanish laws, a widow having no property of her own, and there being no community property, was entitled to one-fourth part of of the estate of her deceased husband.

This benificent provision perished amidst the wreck of the old system, and no substitute has as yet appeared in our legislation.

Adverting, for a moment, to the latter part of the first section, offered by the minority, I cannot consider the immuring of the one-third part of the husband's property, including the homestead to the widow during widowhood, so beneficial to the wife as the existing regulations on the subject. By law, she is now entitled to one half of the community property forever—under the provision of the minority, she would enjoy the use of only one third of her husband's estate, which all might be what is now termed community property—not forever, nor even for life—but only during widowhood, If inducements be not offered by legislative action to embrace the third honored conditions of matrimony—the gentler sex, at least, should not be deferred by menaces of poverty and destitution from entering a union, sanctioned by reason and religion, and productive of the highest earthly felicity.—Provisions made by tyrannical husbands in their last wills—extending their capricious despotism beyond the grave—limiting portions to their widows during their widowhood, have ever been regarded as most ungracious. In no community or country do they find favor, and I hope that they will not find an examplar in the constitution or laws of Texas.

Returning to the report of the majorty of the committee in relation to the second section offered, that all its objects have been secured by existing laws, and that all laws now in force will continue in force until repealed. It is true, that this section is but an affirmance of the existing laws. But these provisions are of such high importance that they are deemed worthy of constitutional sanction, and to be placed beyond the effects of caprice, and the mutability of opinion. The convention will doubtless agree in the propriety and importance of the provision for the registration of the wife's separate property. Under what penalties this duty should be enforced, it will be for the wisdom of the legislature to determine. Some means should be afforded, by which the condition of property under a person's control may be ascertained by creditors, and all persons with whom he has business relations.

I anxiously hope that some provision may be adopted by the convention by which the rights of the wife will be shielded under the immunities of the constitution. Should our present law be repealed, and the common law have effect, all slaves, money and every other species of property, lands excepted, which the wife brings with the marriage, or acquires thereafter, become the sole and absolute property of the husband. The whole may be absorbed in the payment of his debts before marriage; may be lost in speculations or at the gaming table, may be be wasted and entirely destroyed, or may be given away in the presence of his deserted and beggared wife, to the most unworthy wretches, with the most complete impunity, without responsibility and without impediment interposed, or remedy afforded by law.

If these sections be adopted and carried out by the legislature, the property of the wife cannot be wasted by prodigality or fraud.

The work of destruction would be stayed by the strong arm of the law; or if the damages were effected, the most ample means for the redress of the wrongs and injuries, would be supplied.

Mr. Young moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the adoption of the 18th section of the report on the judiciary department,

The ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Armstrong of J., Armstrong of R., Baylor, Bache, Bagby, Cazneau, Cuney, Darnell, Everts, Forbes, Gage, Hicks, Hogg, Horton, Holland, Hunter, Jewett, Jones, Latimer of L., Lumpkin, McGowan, McNeil, Miller, Power, Standefer, Tarrant, Van Zandt, Wright and Young—30.

Noes—Messrs. Anderson, Brashear, Brown, Cunningham, Davis, Hemphill, Henderson, Irion, Latimer of R. R., Lewis, Lusk, Lipscomb, Moore, Rains, Runnels, Scott, Smyth, Ochiltree and White—19.
So the section was adopted.

Mr. *Hemphill* said he trusted some one would move a re-consideration.

Mr. *Everts* said: I hope the vote will not be re-considered. I understand the law as it is to be this: that all property in lands or slaves, possessed by either party before the marriage, shall be and remain the separate property of the party; that all that the husband has remains his, and all that the wife has or may acquire by gift, devise or descent, during the marriage, still remains her property, and does not go into the community property, but belongs to her as much as if she were not married; and her paraphernalia belong to her. All the property then which may be acquired by the husband by purchase during the coverture belongs to the husband and wife, and is the common property of both of them. Then at the death of the husband, if she had lands and slaves before marriage, they are hers, and remain untouched. If, during the coverture he obtained land by purchase, one-half belongs to the wife, and all personal property being common property, she has one-half of that after the debts are paid. I believe that I am correct in these positions. This law then is still in force: it is not touched at all by the passage of the 18th section, and will remain in force forever, or until it shall be repealed by a future Legislature. The section leaves the subject precisely where it finds it, with the exception of authorizing the Legislature to pass an act defining the rights of married women upon the principle of a community property. Then the law is imperative that the wife shall have some of the property acquired by the husband during the coverture by purchase. The law as it now stands does not alter the common law upon the subject of the lands of the wife; only as the common law does not recognize slave property, the statute comes in and places slaves upon the same footing. I do not see any great necessity for changing the law on this subject. It does seem to me to be favorable enough to the wife. I know a case of this kind. A man married a second time, in Texas; purchased 2,500 or 3,000 acres of land, and acquired a handsome personal property. He died, leaving a young widow, some twenty-two or twenty-three years of age, who brought nothing into the marriage but her clothes. Upon his death, she got one-half of the real estate, and one half of the personal property after the debts were paid: and the balance was divided between six or seven children. Thus his children were rendered almost beggars, while she was made comparatively rich. Hundreds of such instances, no doubt, might be pointed to. The law as it now stands is favorable enough in all conscience for the widow. And the 18th section as it stands does not repeal the law. It only compels the Legislature to define the rights of married women as they may think proper upon the principle of a community of property. Mr. President, we are, as I conceive, emphatically a common law people. It is true the civil law was in force here in the earlier settlement of the country; but the present population was raised and educated under the common law. The laws relating to distribution and descents are generally alike throughout the Union, excepting Louisiana, where the civil law was retained on account of the first settlers being a foreign population of French and Spanish descent. I think, sir, that some little respect should be entertained by this Convention for the opinions of those who may come to this country hereafter from the U. States.

Mr. *Lipscomb* said he believed it was the intention, and he for one had intended, to change the common law upon this subject. He would prefer striking out the section to leaving the law as it now stands, and leaving the Legislature untrammelled. If the Convention adopted this section, it would be considered as calling upon the Legislature to put the separate property of the wife in a position to be subject to the payment of the husband's debts, and to the consequences of his misfortune or ill conduct.

Mr. *Rusk* said: I voted for the section, because I do not like to see the system which prevails in Louisiana adopted here. The laws excluding a certain amount of property from forced sale are sufficient to secure a man's family from want. I am willing to protect women, but the system of legislation proposed would be doing it with a vengeance. The common law, in my opinion, does not sufficiently guard the rights of women; while the civil law, according to my conceptions, runs to another extreme. The report of the committee on the judiciary is not perhaps very exceptionable. I would prefer, however, to leave the subject to the Legislature.

Mr. *Van Zandt* said: He believed himself that it would be best to strike out the whole section, and leave the matter to the Legislature. There seemed to be some difficulty in fixing upon any plan here which would meet the views of all. It would be difficult to amend the Constitution hereafter, and lest something should be introduced which would operate injuriously, he would vote to strike out the whole section.

Mr. *Davis* said: I am extremely anxious to see a provision inserted in our Constitution, which will secure to the wife the property which she brings into the marriage state. I can see no injustice in it. The gentleman from Nacogdoches says he is perfectly willing to exclude from forced sale so much property as will make every family comfortable, if the gentleman is sincerely desirous to make the wife comfortable, why will he not secure her the property she may have brought in? Why not secure to the daughter a sufficient amount of property to relieve her from the drudgery of the wash tub, to which the vices or improvidence of her husband may reduce her? The days have passed away when women were beasts of burthen, and as intelligence increases they will be placed upon the high and elevated ground which rightfully belongs to them. And it is the opinion of the age, that women should be protected in their property. We are told, that in the State of Louisiana females own two or three hundred negroes, while their husbands are in debt to the amount of thousands of dollars. Well, sir, where is the injustice, if the property belongs to the female? The creditors were apprised of the situation of the property; they knew that it could not be taken to pay his debts; and the credit was not given upon the faith of the property. Then, sir, would equity and justice demand that it should be taken for the payment of his debts? No, sir. I do hope and believe that there is a disposition on the part of this Convention at least to secure to the female the property which she may bring into the marriage state. I am, therefore, in hopes that the section will not be stricken out.

Mr. *Wright* said: This seems to be a complicated matter, and one which it is difficult to settle. There seems to me almost as many different views as there are persons. I look upon the rights of married persons as precisely the same in their character as those of persons associated in a firm of co-partnership, and in my view, all property put into the common stock should be subject and liable for all debts contracted by the joint partners during the term of the co-partnership. I think justice and equity demand it. And I do not think we should exempt either party in this case more than in the other. I am willing to go as far as any man in giving protection and comfort to the female; but beyond this I am unwilling to go. And if debts are contracted by the firm for the interest of the firm, I want the property liable so far as the common stock goes originally. I do not see the justice of screening one partner where both are equally benefited.

Mr. *Darnell* said: At an early period, I introduced a resolution in relation to what I conceive to be an important question; I introduced it with a view of ascertaining whether or not it would be proper to insert a clause in the Constitution, guarding the rights of the female portion of the community. Now, sir, is it proper that women should be protected; that they should have their rights guarantied to them by the laws of the State? If so, it would surely be proper and best to place such a provision in this fundamental law. As regards the remarks of the gentleman from Red River, to the effect that marriage should be viewed as a co-partnership, they cannot apply. For in that case protection is afforded to each party. But how is it in marriage, where the female takes the male for better or for worse, and risks the consequences? Can any injury result to creditors from the adoption of the principle of community of property? Is it in contemplation to give this provision a retrospective bearing? No, sir; it is prospective in its operation. Where is the injury to come from? Does not the creditor know the situation of the property at the time of extending the credit? If he acts unadvisedly, it is his own folly. Who are the parties to be benefited by a provision of this kind? Is it not the weaker portion of the community, who have no voice in choosing those who are to rule over them? And why do you wish to give this question the go-by, and leave it to future legislation? We might have a Legislature who would be inclined to disregard the rights and privileges of the weaker sex, and to reject any proposition for its protection, looking, Shylock like, with an eye single to the little means they could put in their own pockets. What has been the fate of legislation upon this subject? It has not been attempted. In what state are our laws now? There is not a lawyer in Texas who can define marital rights; they do not know them, and they cannot know them. The Legislature at one session will pass a law defining the rights of married women; the next will place them upon a different footing; the next will change them again; and the next will repeal every thing in relation to the subject. Sir, the Convention should place this matter beyond the danger of fluctuation. Justice and equity call upon us to take some action upon it here. The wife must now sit weeping by, and see the whole of her property wasted in midnight frolics by a drunken or gambling husband; for she has no power to arrest it. Is not one instance of this kind worth a thousand of your Shylock cases? Under the common law system the wife may be stripped of every thing. She and her offspring are made miserable, and no one is benefited. For, sir, an individual may be in debt to an amount less than half the value of his property, and when it is put up and sold one half may not be paid. By the system proposed, the creditor cannot be injured, and families will be protected. If it is right and proper that they should have their rights guarantied to them, in such a manner that it will be beyond the power of the Legislature to take them away, then this Convention should adopt such a provision. If it is not right, then I say pass it by.

Mr. *Armstrong* (with leave) said: I am certainly aware of the fact that individual cases now and then arise, of a character to elicit the compassion of every feeling heart. Yet I am satisfied that in rejecting the system proposed, we do not adopt the common law; we do not adopt any system, but leave the subject to the Legislature. And here I would call the attention of gentlemen to the fact, that the Legislature has made but one innovation with regard to the rights of man and wife; and that was in 1840. The gentleman bases his argument upon the supposition that the Legislature will be composed of corrupt and iron-hearted men; when in truth experience has shown that there is more gallantry in this age, than there ever has been at any period in the history of the world. According to the gentleman from Liberty, the age is going on improving, and the State of Louisiana has gone far beyond all other countries. Why, sir, there, instead of the man's making a beast of the wife, the man is the beast of the woman; for he cannot buy himself a shirt without the order of the wife; and he is a beggar on his own plantation. She can kick him out of the house at any time, under the system advocated by gentlemen here.

On motion of Mr. Darnell, the vote was re-considered.

On motion of Mr. Hunter, the vote adopting the previous question was reconsidered.

On motion of Mr. Rusk (Mr. Lewis in the chair) the section and substitute were referred to a special committee.

The President then announced the following special committee: Messrs. Darnell, Davis, Hemphill and Runnells, and on motion, the President was added to said special committee.

On motion of Mr. Wright, the Convention adjourned until half-past 8 o'clock, Monday morning.

Monday morning, August 18, 1845.
Half-past 8 o'clock, A. M.

The Convention met pursuant to adjournment and was opened with prayer by the Chaplain.

Messrs. Burroughs and Parker were excused from attendance in consequence of sickness.

Mr. Gage offered the following resolution:

Resolved, That the members of this Convention shall not be entitled to per diem pay for services performed in this Convention after Thursday 21st inst.

Which was laid on the table one day for consideration.

Mr. Lusk offered the following as an article of the Constitution:

"There shall be appointed annually by the Treasurer of this State one Assessor and tax collector, for each county, who shall be residents of the county for which they may be appointed, whose duties, obligations, and responsibilities shall be prescribed by law."

On motion of Mr. Bagby, the Convention took up the

ORDERS OF THE DAY.

The General Provisions being first in order, was taken up.

The 21st section being before the Convention,

Mr. *Jewett* said: Before the vote is taken, Mr. President, I wish to address the Convention in favor of the section proposed, and as succinctly as in my power to give a summary of the laws authorizing the creation of these contracts, a brief history of the proceedings relating to them, and a statement of their present condition. I will do this with as little prolixity as possible. I propose in a few words to state the laws authorizing and regulating the creation of these contracts, and to show the justice and expediency of suspending them. The first act, authorizing the creation of colonization contracts under the laws of Texas, was passed in 1841. It authorized the President of the Republic to make a contract with W. S. Peters, Daniel S. Carroll, and others, for colonizing and settling vacant lands on certain conditions; that they were to introduce a number of families, to be specified in the contract, within three years, &c. The President was authorized to designate certain boundaries. It provided that not more than 640 acres of land, to be located in a square, should be given to any family comprehended in the contract; that all expenses attending the selection of the land, the surveying, title, &c., should be paid by the contractor; it authorized the President to allow the contractors for their services ten sections of land for every hundred families introduced, as a donation. The contractors were required to have one-third of the whole number of families contracted for within the limits of the Republic before the expiration of one year from the date of the contract.

In the succeeding year another act was passed, which extended the provisions of the first law, and made a general law, authorizing the President to make contracts with any number of persons with whom, in the exercise of his discretion, he might think proper to make them. I will read this second act, passed in 1842. The first law made provision for a special contract; this, for an unlimited number of the same character.

[Here Mr. Jewett read the act referred to. He continued:]

The second section of this act provides that all the rights accruing to W. S. Peters and his associates, by the provisions of the former act; and all the duties, obligations, and conditions, imposed by the same on Peters and others, should be extended to such other companies as might be organized under the provisions of this act.

In 1843, again, a joint resolution was passed relative to colonization contracts, entitled a "Joint Resolution to modify the provisions of an act entitled an act granting land to Emigrants" The preamble recites that a certain contract had been entered into with Carroll, Peters and others; and sets forth the expediency of modifying some of its provisions and extending some of the privileges before granted: in consequence of the contractors having been unable to fulfil the conditions, and introduce the required number of families within the time designated. This law permitted the contractors to introduce any number of families, not exceeding ten thousand in all, upon the same conditions as before. It required that the grantees should survey the land assigned to them, as before provided; it provided that they should be required to settle or receive such lots only as should be of fair quality for agricultural purposes, and that whenever they should have completed the surveys of any number of sections, and built a corresponding number of small comfortable houses or log-cabins, and placed families therein, they should receive a title from the government to one section of 640 acres for each family so introduced and settled, &c. It provided further, that in case of forfeiture the parties should only be affected prospectively; and further, that the Cherokee lands should be exempt from the provisions of the act.

Such was the situation of the laws upon this subject during the year 1843. I believe that the contractors had but little success in introducing families, and at that time, I may state it distinctly and boldly, not one of the contractors had ever performed the conditions specified in their contracts; they were out of existence; they were all forfeited; and the government had then the authority and would have been justified in resuming the lands embraced within the limits of the colonization contracts. At this period the attention of the Commissioner of the General Land Office was attracted to the subject, and in his annual report for 1843 he calls to it the attention of Congress. The position occupied by the commissioner (Col. Thos. W. Ward) and his acquaintance with the subject, entitle his suggestions to respect. I will, therefore, solicit your attention to a short extract from the communication to which I have referred, relative to the colonization contracts.

[Here Mr. Jewett read the following extract from the annual report of Thos. Wm. Ward, Commissioner of the General Land Office for 1843]

"The law granting lands to emigrants, approved January 4th, 1841, and the amendatory law thereto of the 6th Congress are illegal, impolitic, and objectionable, on several grounds. The several laws granting lands to emigrants have induced many to come to this country under the belief that they could select their head-right claims from any of the vacant lands in the Republic: the donations to soldiers had likewise caused many to remain in the field, when there was an apparent necessity for them. Script has also been bought from this government, solely from the belief that the vacant lands of the Republic would remain open for locations of all kinds of claims issued by the government, and that the only loss or prejudice that the holders of claims would be liable to sustain, would arise from their own tardiness and negligence in not securing the best land before others having equal claims; but they did not suppose that the government would prejudice their right by such wholesale donations of the best and most valuable lands. The unsettled state of the country has heretofore prevented them from making location on the land that has been granted to these colonies. The Land Office is not yet open in Bexar county, where the land reserved to Fisher and Miller's colony lies; owing to the records of that county having been sent, during the invasion of March '42 to Gonzales for safe keeping, and until a short time since, no locations could conveniently be made on the immense tract included in the contract made with Peters and others; many of the numerous holders of different kinds of claims issued by this government, would without doubt, have taken advantage of the first favorable opportunity to have located their claims on these lands contracted away by the government. The grants of head-right certificates to emigrants, and the script sold by the government of various kinds, amount to an implied contract between the government and the grantee, that the latter shall have at least the first opportunity of locating his claim upon any of the vacant lands of the Republic. From the reasons above stated, that it was impossible for locations to be made, owing to the unsettled state of the country, this implied stipulation has been violated on the part of the government, by its having contracted away the most valuable lands before an opportunity was offered claimants of locating them. It is by no means held that the government should not make grants as they have heretofore, but there is a very material distinction between this and an entire preclusion to the holders of claims from locating the lands that now are, or are likely to be valuable for a considerable length of time. The lands in this country constitute the principal wealth of most of its inhabitants; upon the value of them they have founded their hopes of success. The government of this country has encouraged this hope, and it would therefore be the greatest injustice for it now to preclude emigrants from the United States from locating their claims on our frontiers; to give these lands to crowds of foreigners who never shared in our struggle for independence, and who come to this country from mercenary motives only, and send our own citizens to the Commanche and Buffalo ranges to select lands, after they have waited for years to perfect and enjoy their claims, in the confident belief that the government would act towards them in good faith. Every Texian now within our borders feels a greater interest in this country than the foreigners to be introduced under these contracts can possibly be brought to feel, and future events may prove that the best policy of our government would have been not to have lessened this feeling by giving to foreigners the reward due to our countrymen and they who have proved themselves our friends in the hour of need. It is furthermore believed that contracts of this kind are monopolies, within the meaning of the Constitution, and if so, did they not even prejudice the rights of claimants under this government, they are illegal.

The contractors may sell the benefits of their contract to monied capitalists in Europe, who, for trifling considerations, the transportation of the emigrants to this country for instance, can purchase the emigrants' lands, and thus the principal object of the government, in granting these lands, which was to secure a home to the emigrant, would at once be frustrated; the wealthy speculator would monopolise the lands and receive the benefits of the benevolent object of the grant, and the emigrant would either be held by them in a kind of vassalage or slavery, or they would wander without a home, dependant upon the charity of our citizens. The evils incident to these laws, and the contracts made under them, should be remedied as far as possible. The repeal of the laws would prevent other contracts of a similar nature from being entered into, and the longer existence of them will render every acre of vacant land in the Republic liable to be monopolized. But if this system of contracting away vacant lands is considered politic, a law should be passed limiting the time within which the holders of land script warrants, head right certificates, &c., should locate their claims.

Signed by Col. Ward, present Commissioner of the Land Office, and dated November, 1843.

That brought the attention of Congress to the subject, and I presume had an influence in causing them to repeal the law, which they did during that session (1843 '44), by an act entitled "An act to repeal all laws now in force, authorizing the President to form colonization contracts, and to forfeit such as have already been made, where the conditions have not been strictly complied with." This act it appears was passed by a constitutional majority on the 30th January, 1844. At that time one Charles Fenton Mercer was in the town of Washington, soliciting Congress to give him a contract, with large privileges, embracing millions of acres. Congress seeing the deleterious effects ot the system, repealed the laws authorizing it by a large majority. The President vetoed the act, and sent it back, and while it was in progress of being passed over the veto, I think on the very day of its passage, this Mr. Charles Fenton Mercer concluded his contract. This, as I conceive, was an express violation of the will of the people, and committing a fraud upon them.

Now, sir, the majority of the committee have reported in favor of suspending all these contracts without exception. And if this provision is adopted, it will operate no injustice whatever to the contractors; it is the line of safe precedent; it will be both just and expedient. And I contend that the only rule by which we should be guided, is the public welfare.

Sir, in pursuing this course, we shall but pass an act similar in its character to that adopted by our former Convention. The Congress of 1837, in the general law, entitled "an act to reduce into one act, and to amend the several acts relating to the establishment of a General Land Office." provided or declared (§26) that all empresario's contracts having ceased on the day of the declaration of Independence, all the vacant lands of Texas were the property of this Republic, and subject alone to the disposition of the government of the same.

I have heard much declamation here about vested rights, about the impropriety and illegality of interfering with vested rights. But here Congress, by one sweeping clause suspended all these contracts. And I have never heard of one single murmur or complaint on the part of the Empresarios. They have brought suits against the Republic; in some they have recovered, and others are still pending. Even if the new colonization contracts have created vested rights, I would have them preserved. But I only regard with sympathy the rights of the settlers; those of the contractors I regard only as vested wrongs. These recent contracts were conceived in fraud, and carried on in fraud. They were made with the sovereign authority of Texas, and ought to be subject to all contingencies, and that sovereign authority, whenever it finds it necessary to change the form of government, or expedient to repeal such contracts, has certainly the right to do so. We have provided that private property can he taken for the public benefit, in making compensation therefor. These contracts may then be suspended, provided adequate compensation be made therefor. The contractors cannot then complain that we are interfering with their vested rights, since we make ample provision for an indemnity.

I am in favor of suspending these contracts, because they are all forfeited. None of the contractors have introduced the stipulated number of families, nor have any of them afforded protection to the frontier—the inducement presented to Congress for making the law. At that time the frontier was infested with Indians; war was threatened with Mexico; and the prospect of annexation was gloomy. It was thought that by authorizing these contracts, adequate protection would be afforded to the frontier. But this expectation was not realized.

Another reason which I have is, that it would be a mere act of justice to the soldier, and all those who encountered the perils of our revolution. The first and most sacred pledge on the part of the government, was that which gave the lands to the soldiers after the revolution of 1836. The Republic had then no money to give, and she did promise to give them all that was in her power, to wit., lands. I would vote therefore to suspend these contracts, because they interfere with this first and most sacred pledge.

I will also vote to suspend them, because by so doing we shall increase the residue of the public domain left for the payment of our public debt. This is another cogent reason for me to pursue this course.

I am aware that it will be argued by the opponents of this measure, that the Senate or Congress of the United States may urge this section as an objection to the acceptance of our Constitution; that they may regard it as interfering with vested rights. But I cannot see what right the Congress of the United States can have to interfere in this matter. The Joint Resolutions leave to Texas the exclusive control of her public domain. If we retain the public lands, we retain the right of exercising sovereignty over them; and the United States has no right to interfere with or dictate our action. It is a matter which pertains exclusively and solely to Texas; it is a matter relative to her domestic concerns. And if with an honest view of liquidating her public debt, she suspends these contracts, and throws open these lands to location, she is but doing an act of justice which will remain a bright and not a dark spot on our national escutcheon.

I am not one of those who apprehend the great danger which some anticipate in connection with abolition. Yet from statements which have been made by members of this Convention, I think there is reason to believe there may be some danger from this cause, unless these large contracts are suspended. I have referred to the law authorizing the introduction of ten thousand families by any one contractor within the time limited. There may be danger from this source. Within the eight or nine months before the adoption of our Constitution, five or six thousand votes may be thus introduced into the Western country, and then this may be no chimera floating before our eyes.

I have stated my belief that all these contracts have been forfeited. Such I honestly believe to be the fact. I would call upon the gentlemen here from every part of the country to say if it is not so. I call upon the gentleman from Travis to say if the contract of Miller & Fisher has not been forfeited? I ask the gentleman from Refugio if it is not the case with the colony upon the bank of the Rio Grande? and I ask the gentleman from Fannin, whether the large contract made with Peters and others is not forfeited; whether they have not failed to comply with the terms of the contract? I am aware that they have introduced a larger number of families than any other contractor; but when the terms are strictly examined, the gentlemen themselves cannot deny that the contract is forfeited.

It may be that in pursuing this course, the Convention will assume judicial powers. The former Convention cancelled the grant to John T. Mason, and we have adopted a similar clause; and I hold that we are fully competent to do so. We can create and delegate judicial authority, and if we can do this, we can exercise it ourselves.

These are briefly the reasons which have induced the majority of the committee to report the section, and actuate me in supporting it. I would ask these gentlemen who come from the proper sections of the country to answer the interrogatories I have proposed, and state from their knowledge of the facts whether these colonies are not all forfeited?

Annexation is about to take place, and a flood of emigration will pour into the country; the government does not give any bounty land to settlers; the contractors hold out the inducement of a certain quantity of land; and the number of inhabitants which they have agreed to introduce, will settle in the country without any exertion upon their part. Now, sir, is this carrying out the intention of these contracts? No, sir: it was intended and expected that the settlers in these colonies should come to the country at the instance of the contractors, that the contractors themselves should be the moving cause of their emigration. And, sir, I contend, and I believe that any court of justice will determine that an accession of individuals coming, of their own accord, is not a compliance with the conditions of the contract. And I do not believe, sir, that this course would be doing the contractors so great injustice as some gentlemen seem to think. To suspend the operation of their contracts, would give them the benefit of them to the present time, and give the settler the benefit of their settlement upon them. Sir, I think we should take into consideration the policy of the country; and I will ask this Convention if it is the policy of the country to allow foreigners to make fortunes by speculating in the lands of Texas; men, who, as the gentleman from Nacogdoches well remarked, have never raised an arm in the defence of the country, or spent a cent to advance its interests? Some of these same individuals, sir, who claim the whole broad side of the country, have recently taken the stump against annexation, and exerted themselves to the utmost extent of their ability, to defeat this great and important measure, upon which the interest of the county depends. And these are the individuals whom we must not touch. We are told that we have made a contract with them, and we must carry it out, although they make stump speeches against annexation, and denounce Texas at every corner; still the weight of a finger must not be laid upon them. I do not pretend to know the character of all these contracts; but I know something of one of them; and I do not believe it will be doing any injustice to the individuals concerned to make a brief statement of the facts. It will be recollected that one of these contracts, which embraced the finest and largest tract of land upon the Trinity river was made by Charles Fenton Mercer. How was it obtained, sir? I cast no censure upon any individual with whom it was made; I think in all probability an imposition was practised upon him by Mr. Mercer, for I know that he did practise a fraud at the time he obtained the contract. He appeared at Washington at the time of the session of Congress, and said that his business there was to get an extension of time for Peters' contract. What were the reasons he urged? He said that in the treaty between this government and the Comanche Indians, the Republic had stipulated that no settlements should be made in a certain portion of the country which he represented to be included within that contract. He said that justice required that the time should be extended, at least so long as settlements were prevented in consequence of the treaty. At that same session of Congress, a law was passed repealing the law authorizing these contracts, and prohibiting any further extension of time being given in any of the contracts. During the time of its passage, and between the time at which the bill was sent to the Executive for his sanction, and at the time at which it was returned with his veto, a new contract was made with Mr. Mercer. And what was the character of that contract? Was it an extension of time to Peters? No, sir. It was a contract granting him the whole broad side of a country. Did he not know it was in opposition to the will of the people of Texas, so expressed by Congress at the time? He obtained the contract under these circumstances, professing that he was only seeking an act of justice in the extension of Peters' contract. That was not all. With this contract in his pocket, and without communicating the fact to any member of Congress, he requested to be heard upon that subject, and the reasons which he advanced were those I have mentioned. At the very time he was urging these claims, he was practicing this fraud; for I pronounce it a gross fraud upon Congress. He had at this very time a contract in his pocket by which the fairest portion almost of the upper Trinity was granted to him. I will ask, sir, if this man could have believed any thing else but that the people of Texas at the first opportunity would annul that contract? He must have known it. I do not pretend to say under what circumstances others of these contracts were made; but I do pretend to say that this was made under such circumstances as to give this Convention the right to say that it is null and void; not because it was unconstitutional, not because it conflicts with any other claims, but because it originated in fraud, which made it not only voidable, but void *ab initio*, and all that is necessary is for this Convention so to declare it.

I know, sir, that in all probability I have detained the House longer than I should have done.

Mr. Runnels offered the following amendment to Mr. Mayfield's amendment:

Strike out "the final action of the United States' Congress upon this Constitution," and insert "the time of the adoption of this Constitution by the people of Texas," and strike out the words "secured or," in the 10th line.

Mr. *Love* said: I shall not attempt to enter into any argument, but simply express my own views in relation to these contracts. It is not necessary now to go back to the manner in which they originated. The only question before us now, is what we are to do with them. I believe that in justice and right they ought to be annulled; but at the same time I have a great objection upon the grounds both of principle and expediency to voting for an interference with any rights actually vested, whether rightfully or wrongfully obtained. I am more favorably inclined towards the proposition of the gentleman from Nacogdoches, to prohibit any future extension of time, and give the contractors no claims whatever further than we are compelled. And I would much prefer suing them to giving them the power to sue us. I do not believe that any of these contracts have been complied with according to law, nor do I believe that any one of them was granted according to law. The only question to be decided, it seems to me, is whether we prefer to annul them absolutely, or to take the alternative offered by the gentleman from Nacogdoches. I will at the proper time offer an amendment which I think will strike at the root of the evil. [Mr. *Love* here read the amendment which he proposed to offer].

Mr. *Wright* said: None of the propositions which I have seen upon this subject entirely meet my own views, and I believe that every one has the right to have and express his own peculiar notions. The matter is that we have gotten into a scrape by misfortune or folly, and now we are laboring to get out of it. The objects which induced the government in the first place to enter into these contracts, have failed to be attained. All parties are willing to concede that much. The great object on the part of the government was to secure the frontier settlements from the continual marauding incursions of the Indians and Mexicans. In order to effect that, the government entered into contracts with these individuals, giving them unlimited powers, unprecedented as it was, for the introduction of settlers, who might meet and successfully repel any attacks upon the frontier. Now, I would ask gentlemen who are advocating an extension of time upon these contracts, whether these individuals have ever taken the first step to secure the government the protection contemplated in the origin and creation of these contracts?—Then, sir, in proportion to the exertions made by these parties, in good faith, to carry out the end and aim of these contracts, is the government of Texas bound to compliance upon her part, and no further. If they have gone to considerable expense—if they have made use of means and exerted themselves in other ways, to accomplish the object, and have made the result visible in the community, then they are to receive that much as a credit upon their part of the performance. Some gentlemen seem to know nothing about these contracts, except the law which created them. There is one of them in particular, sir, which I have made it an object to inquire into, and I think that one may serve as a sample to them all. That is the one last made, which has been alluded to by the gentleman from Liberty. The circumstances under which it was made were very peculiar. And if the party ever attempted to benefit the government in any way at all by the obligations imposed by virtue of of the contract, I have never yet been able to learn it. That contract, sir, appears to me to have been made in violation of the law under which it purports to have emanated; and if so, it had no force from the beginning. In these contracts, in the first place, they have to set down in round numbers, the number of families they design to introduce; then they have to bind themselves to introduce such a number in a certain proportion each and every year from the date stipulated until the number is completed. In the next place, they have to set down the metes and bounds of their colony, and to mark its lines, so that the common surveyors of the country cannot come into conflict with the rights of citizens accruing under the contract. Then, if we find that they have totally failed even to attempt, much less to perform, any one of these things, the government is certainly not bound to fulfil her part. It will be found upon examination, that in the contract to which I have alluded, the very first principle is violated. The number of families is not set down at all; and the only way to arrive at the number contemplated, is by calculating the number of alternate sections contained within the bounds of the colony. You will find, again, that the metes and bounds bring the colony into direct conflict with the Cherokee territory, which was specially reserved. Under these circumstances, the government is of course under no obligation whatever to give these contractors any extension of time, or to grant them any exclusive privileges to the prejudice of her own citizens. The question, then, arises, is it expedient for this Convention to do justice to the great mass of the community in Texas? Which of the parties has the greatest claims? Shall we chiefly consider the rights of the citizens, who have fought for the country, and maintained it from the beginning, or those of these speculators who have never dared to place their feet upon the frontier, and have never raised a hand but in contradiction of her best interests? Are we to consult the convenience of one or two individuals, or that of the whole people of Texas? Where do these gentlemen reside? Who are they?—Are their rights and interests identified with ours? No sir. Then I hold the principle, that we are bound to protect ourselves first. It is the duty of this Convention to consult the convenience and interests of the people of Texas; and it is upon this principle that we have to act upon these contracts. So far as they have been complied with, exceptions should be made. So far as the contractors have acquired rights, and so far as they can make that fact appear before the courts or the Convention, those rights should be secured, and no further. I am willing to give them all that they are entitled to; but I am not willing to extend them any favor when they have taken no steps to carry out their contracts. Some allusion has been made to the probable situation of a portion of the country, in consequence of annulling these contracts and opening the lands to surveys. Sir, I hold it as a principle, that we are bound to pay our debts, however contracted, when we have the power so to do. So far as the rights of citizens are to be endangered, my opinion is this: I do not conceive that it will have any material effect upon those who occupied a portion of that country before these contructs were made—those who have lived upon the frontier about thirty years, have lived there too long by about twenty-five, I think. That section of the country was very much annoyed, previously to the passage of the law authorizing these contracts. From 1838 to 1841, the northern frontier was one continued scene of bloodshed and warfare. The counties of Lamar and Fannin were entirely laid waste and desolate, and just at the time when the last settlement in Fannin county was about being abandoned by Captain Baily English, and his associates, and perhaps forever, Major Jonathan Bird came to the rescue and saved the people. He then advanced about ninety miles to a point upon the west fork of the Trinity, and there maintained his post, thus giving entire security to the settlements in Fannin county. Major Bird was at his post, with about twenty men and a considerable number of families, when he was ordered off and driven away by the agents of Peters' colony, who then gave him the first intelligence he had of the existence of such a contract. Since that time these persons have changed their course; but they have not satisfied my mind with regard to the illiberality with which they treated these poor fellows, who have never asked or received a dollar for the services they rendered upon that particular occasion. I am as willing to give the emigrants their rights as to give the old settlers theirs. I am not desirous of sacrificing the rights of any. We can guard the rights of all, and extend mutual benefits to all alike. And if any one should attempt to interfere with the rights of others, we can give them a law to which they may appeal, I am willing to give these people every foot of land they have earned, and to throw in a little more. As to to the colony to which I have referred, I contend that it has no claims upon us whatever. No man here will say that contract was made originally in conformity with justice or equity, Let us examine for a moment the circumstances under which this contract was entered into with Charles Fenton Mercer. We find him here at the 8th Congress, supplicating for the contract; and see the privilege allowed to Gen Mercer. He was permitted to appear before Congress, and advocate the principles set forth in his contract. And what did that Congress do? They rejected all of his demands with disdain. As nearly as I can recollect, the vote stood 33 to 6. He then sought the President, to see if he could not meet with better success in that quarter; and the Congress seeing what he was up to,, introduced a law repealing all laws upon that subject, which passed both the House of Representatives and the Senate, and was sent to the President on or about the 22d day of January, 1844, for for his approval, and about the 27th of the same month he sent it back to the House with his veto. Upon the 28th, the House passed it over the veto by a vote of 34 to 5, and sent the bill and veto to the Senate upon the 29th. And upon that same day, to the astonishment of all his friends, he signed, sealed and delivered this instrument called a contract into the hands of Charles Fenton Mercer, and that too with a perfect knowledge of all the facts, well knowing at the same time what would be the action of the Senate upon the law under consideration. And upon the 30th day of the same month the Senate did pass the law over the veto of 8 to 3. Thus this contract was made under very suspicious circumstances, to say the least. This is enough to kill it of itself; the presumption of fraud is too strong for it ever to be tolerated by the people here. Then, I say, it is the duty of this Convention to arrest this foul attempt to impose upon the people of Texas; to declare this contract a nullity in itself, as it always was, and open this country, thus attempted to be wrapped up in mystery and fraud, for the honest payment of the debts of Texas. This one is an exception; there is no right in it; it deserves the execration of this body.

Mr. Mayfield accepted the amendment offered by Mr. Runnels.

Mr. *Everts* said: Being called upon, as I imperiously am, to say something upon the subject of the colony contracts of this Republic, I will endeavor to give my reasons in a very brief manner, why I cannot vote for the proposition now before the House; that is to suspend, or in other words, to amend and set aside the various colonization contracts of this Republic. Of the precise provisions and details of the various contracts, I am not empowered, except as to one: that is the contract made with Peters and his associates, neither is it necessary here to discuss the merits of those contracts. Nor, Mr. President, is it necessary, nor shall I say much upon the policy of granting them in the first place. Congress, in the year 1841, passed an act, which authorized the President, then Sam. Houston, to make a colony contract with Peters, and others. In the year '42, this law, by another act, was made general, giving the President power and authority to make as many colony contracts as he might deem proper and advantageous. In 1843, a law passed by the Congress of this Republic granting further time to Peters &c. to comply with the conditions of his contract, and during the same year that contract was modified, and new and different conditions were agreed upon, and entered into by the contracting parties. About this time the government entered into a contract with Charles F. Mercer, when the law authorizing such contracts to be made in future, was repealed.— All this legislation upon the subject, through successive sessions of the Congress, is strong evidence to every mind that the policy was deemed good, and that there was a necessity for its adoption in order to people this country, and induce emigration to it.

I could draw, were I permitted, a distinction between the policy and propriety of entering into the various contracts. Peters was the first one made, and that company had expended large sums of money in attempting to comply with the conditions imposed, they had introduced a large number of families, and in some measure given protection and quiet to the frontier, when the law was repealed, authorizing grants of this kind to be made The Mercer's contract was made after the Legislature had repealed this law, but before the repeal was approved by the

President, so it would appear that the necessity and the policy of entering into the Mercer contract, were deemed by the Congress not to exist at the time. And were I to express an opinion, I should say that there was no necessity for this last grant to be made, as the time had gone by, and Texas was in a condition not to hold out such immense inducements and bounty to emigrants. So much for the policy.

It is said, sir, that these contracts are all unconstitutional, and therefore this body ought to annul them.

So far as I have examined the subject, I cannot perceive the force of this assertion. I hold, Mr. President, that by the revolution and the independence of Texas, all the unappropriated lands within her limits became the property of, and the title vested in the government of Texas. If this be true, had not the government a right to dispose of it in any manner it might think proper and advantageous. Do gentlemen, or can they draw any sensible or constitutional difference between giving 640 acres to an emigrant simply because he emigrated to Texas within a given period, and giving the same amount upon the conditions of the colony contracts? I really cannot perceive any difference; both modes are bounties, and inducements held out to the world that Texas will give to the settler upon her public land 640 acres. It is not pretended, from any quarter, that the 640 head right grants are unconstitutional. And why? Because the unappropriated lands belong to the government, and it has a right to dispose of it in any manner thought proper. It is said that about 400 leagues of land have been granted to the different counties for the support of schools and colleges. Are these grants unconstitutional? Are they all null and void? No one can pretend, for a moment, that they are. But it is said that they are monopoly, and therefore unconstitutional, inasmuch as monopolies are prohibited by the constitution of this Republic.

To this assertion, I would reply that the law under which the President made the colony contracts is general in its character—it is not exclusive. It authorizes him to make as many such contracts as he pleases. Under this law, some four or five colony contracts were made with different individuals, and of different nations, there is no exclusiveness about it.

A monopoly, if I understand the term, is the granting a privilege to a particular individual or company, which is prohibited to all others.—But, sir, a law which gives the right to all alike, to partake of its benefits by complying with its conditions, can never be deemed exclusive in character, although but few may partake of its benefits. Such, I take it, is the character of the colony laws—and if so, those contracts are no monopolies.

But, sir, suppose that I am wrong in all the positions and arguments advanced, I would ask if this body is the proper tribunal to pronounce judgment upon these contracts. I do not believe this Convention was called for that purpose. And I ask if it would not be acting in bad faith to annul and suspend these contracts in this exparte manner. These contracts have been at various times solemnly entered into, whether they are fraudulent in their character, or unconstitutional or not. This, sir, is not the place to try those questions.

Let the whole of the questions involved in the subject be referred to the courts of justice, let the parties be summoned into the halls of justice; and if, upon a rigid inquiry, it shall be found that these contracts are unconstitutional, let the courts pronounce them at an end, and declare them forfeited If, sir, the contractors have not complied with the subsequent conditions of their contracts, they must by the very terms of them be declared to be at an end.

But, sir, a court is the proper place to make this investigation. Sir, I would not, for another and stronger reason than any other, declare these contracts at an end. Texas is now attempting to form a constitution which is to be republican in its character, in order to be admitted into the American Union as one of the States of that confederacy. And the instrument which we frame here must, in all respects, be consistent with the constitution of the U. States. That instrument and the treaties, and acts of Congress made in pursuance thereof, will be the supreme law of the land, the constitution of any State or act of any State Legislature, to the contrary notwithstanding. That instrument declares that no State shall pass any law impairing the validity or obligation of a contract. Would not the suspension of these colony contracts by this body, *exparte*, be an act directly conflicting with those provisions of the U. States Constitution? I solemnly declare that I believe it would. Insert this suspension clause into our constitution, and, sir, I fear all our labors here would be in vain, and annexation an idle dream. Would not the Congress of the U. States reject our constitution, and justly too? You would give to the enemies of annexation the advantage, (and the party opposed to our admission into the Union is a powerful one, although not in power now,) and you would place the friends of the measure in a condition to compel them to vote against the acceptance of our constitution, the consequence would be, Mr. President, the postponement of our admission into the Union, if not an entire defeat of the whole measure.

Therefore, I repeat again, let this whole subject of colony contracts be referred to the proper tribunals of the country, and I have the fullest confidence that entire justice will be done in the premises.

Mr. President *Rusk*, [Mr. Darnell in the chair] spoke as follows: I cannot agree with the gentleman who has just taken his seat, that this contract stands upon high ground. If he had said that it covers a vast deal of ground, I would cheerfully agree with him. I shall myself, if compelled to vote, vote against the section as now presented, but upon very different grounds from those of the gentleman from Fannin.

These contracts, I believe, were unconstitutional in their inception. The law which was passed authorizing them to be made was unconstitutional on various grounds. In the first place, if I understand the true monopoly, it was giving to a few individuals, not residents of the country, individuals who had not mingled in the strifes and shared the sufferings and perils of the revolution, who had never struck a single blow to redeem our lands from the foe, a large monopoly in the country. Our land system is peculiar. At one time our all was in jeopardy; there was a time when we needed the assistance of every strong arm which we could command, for the purpose of wresting from the hands of the tyrannical Mexicans, the titles to these very lands. At that time the Consultation by the strongest guaranties of which the English language is capable, promised to those who should come then to the country when their aid was needed, and render proper service, the right to locate any vacant and unappropriated lands in Texas. This right was then strongly guarantied by the Constitution. Then those who emigrated here in the hour of peril, darkness and despair, are clearly entitled to the location of their head rights. Those who took up arms and mingled in the strife are entitled to the location of their bounty warrants. There was a strong guaranty given in the Constitution, and in all the laws afterwards passed on the subject, that they should have the entire territory of the Republic to select from. Then this strikes my mind as being an obligation which future speculation by no means could destroy. The government further guarantied to the representatives of these noble spirits who fell under Fannin and Travis the right to locate a certain amount of the lands which their husbands and fathers had earned in their last dying struggle for freedom. This law, then, not only authorizes a monopoly, but granted away a right which the Convention and the people had guarantied to others. It was contrary to the spirit and genius of our institutions; and I am satisfied that whenever these contracts come before any judicial tribunal, and all the laws bearing upon them are investigated, they will be declared absolutely null and void, as in direct contradiction to Constitution provisions of the Republic of Texas.

These gentlemen, says the gentleman from Fannin. have rendered the country important services. In what field, sir? Where, let me ask? When have their voices been heard in the councils of the country in her darkest moments? Where have they borne arms in her defence? The voices of some of them have been heard in Texas, they have been heard in the United States, crying out against the very measure, which to my mind guaranties the unmolested enjoyment of all their rights, to those who have fought the battles of their country, and served her in her darkest days: our annexation to the United States. And do they deserve our kind and fostering care? Shall we, from motives of policy, turn off the soldier, who has fought, and the heirs of those who have fallen for the redemption of the country? Shall we say to them, we must reserve these lands: not for the actual settler, for he is protected: and I here solemnly enter my protest against the amalgamation of the actual settler with that of the foreign speculator who is endeavoring to make a fortune out of these emigrants. The settlers are citizens of the country, they are are here for weal or wo: they have their rights guaranteed to them by this very section itself, and shall have in any article which I will vote for upon this subject. I protest also against the idea that we have ever attempted to curtail the rights of those who came but yesterday. Such arguments as these are totally useless. They have no foundation in the opinion of the people of Texas, nor in the acts of their deliberative bodies or of this Convention itself. Then there are no parties here but the government of Texas on one side, and the contractors on the other; and I shall go just as far as I think we can go with a proper respect to ourselves.

I shall vote against the 21st section, because, if these contracts are constitutional, this Convention may have the power, but I deny the right, to interfere with a single vested right. That contains a sort of admission that they are in accordance with law.

And I take this broad ground; that when this Constitution goes before the Congress of the United States, that body may imagine that we are here destroying legal and vested rights. If they should believe that, it is competent for them, and it would be their duty to reject it. The gentleman from Robertson referred us to our Constitution of the Republic of Texas. Sir, that Constitution was made under very different circumstances from this. We are making here a State Constitution; we have acknowledged the supremacy of the Constitution of the United States of America. We are going into that Confederacy, and therefore give them the entire right of making our Constitution. In this Constitution is an article which says that no State shall pass any law impairing the obligation of a contract. And I would be unwilling, however bold I might be, when we could reach the object by a different route, to run atilt against the Constitution of the United States.

Again, it is a principle of law, as has been stated here, that if we put it out of the power of the contractor to comply with his contract, the obligation rests upon us, to comply with that contract to the letter. It is not only a principle of law as held in the celebrated Aredondo case in Florida, which went up to the Supreme Court of the United States, but it is a fundamental principle running though all contracts.

Then, sir, this 21st section might involve us in many difficulties; and, under the circumstances, I shall feel myself bound to vote against it. I have, with the assistance of other gentlemen, drawn up a section which I propose to offer as a substitute.

Mr. Rusk offered the following as a substitute for the 21st section:

Whereas, it is believed that the colonization contracts heretofore entered into by the President of Texas, as well as the laws authorizing said contracts, assigning large tracts of country to certain individuals for the purpose of colonization, were unconstitutional, and calculated in their operations to deprive the citizens of Texas of their just rights, and that the terms annexed to them have not been complied with by the contractors—

The Legislature is prohibited from extending any further time to the contractors, or dispensing with any conditions attached to them; and they shall at their first session pass such laws as may be necessary to institute judicial investigations for the purpose of enquiring into and annulling said contracts, provided they are proven to be illegal and void, provided the actual settler already in said colonies, shall be guarantied *in their just rights to their quantum of land as settlers.*

Mr. Mayfield offered the following amendment to the 21st section:

Strike out "but the rights to land of actual settlers already introduced in conformity with the terms of the contract are hereby guaranteed," and insert "provided always, that any actual colonist who shall be residing within the limits of any of the said several colonies at the final action of the United States' Congress upon this Constitution, and shall be engaged in the cultivation of of the soil, or any of the mechanic arts, shall be entitled to the lands secured or attempted to be secured to him, her or them by virtue of said colonization laws or contracts."

Mr. *Van Zandt* said: I will submit a few remarks, Mr. President, expressing the views which I entertain upon this subject, and giving my reasons for the vote which I shall give. I look upon the question before us as one, in the consideration of which we should be governed chiefly by our nation's policy. I do not conceive it necessary here to inquire whether these contracts were originally constitutional or not. Nor do I think it necessary to proceed in the language of the substitute offered by the gentleman from Nacogdoches to declare our opinion that they are unconstitutional. I was much gratified by the opening remarks of the gentleman from Nacogdoches, but I regret exceedingly the conclusion at which he arrived. I prefer, so far as I am concerned, that the Convention shall adjourn and suffer things to remain as they are, rather than adopt this substitute. I believe that, in the latter event, we shall not only fail to reach the object contemplated, but, on the contrary injure both the country and the contractors themselves. What would be the effect of this section, if adopted? It would be this, sir: It proceeds first to give it as the opinion of this Convention that these contracts are unconstitutional and void Now what effect will that have upon the settlers in the first place, those who have already been introduced?

At once it will render them dissatisfied, because it would devolve upon future legislation to say whether their claims shall be ratified or not. The effect upon future emigration will be to hang up all that portion of country; it prohibits not only surveys, but the introduction of other settlers I do not believe, sir, that we should declare these contracts unconstitutional, without giving the parties interested an opportunity of being heard. If this course is adopted, what inducements can the contractors offer hereafter in bringing in settlers? In vain may they point to the statute book, if the Constitution has pronounced them unconstitutional. And thus a large portion of the country will be shut out both from surveys and location. I therefore object to the whole preamble, as entirely independent of the section, and ill-becoming in the Convention to adopt. I do not believe that at this time we have either the opportunity or the means necessary to a full investigation of these contracts, so as to say whether they are unconstitutional or not, or whether the contractors have complied in good faith with their contracts as originally entered into. If we had them before us, it might become us to give an opinion of this character. But under the circumstances, it is impossible for us to pronounce such a verdict. If called upon at this time to give a vote connected with a denunciation of these contracts as unconstitutional, I must decline giving it. I shall determine this question in one mode only: I regard it as a question of policy. What was the original object in view in authorizing these contracts? Our frontier was exposed to the inroads of the merciless savage; husbandmen were frequently called from their homes and their crops to defend themselves and the adjacent country; the country was desolated; the population was receding; and that region which a short time before was in a flourishing condition, and bade fair to rival any portion of the country in actual prosperity and wealth, was soon to become a desolate wilderness. At this moment these individuals came forward, and offered to contract for the introduction of a certain number of families upon the exposed frontier, sufficient to give protection to the old settlers. I was in Congress when the law passed; and the question of constitutionality, so far as I recollect, was not even agitated. The only question then considered was one of policy, Is it policy to make it the interest of these individuals to introduce these settlers to stand there as a breastwork for the exposed settlements of the country? This was the question, and the only one. Now, the question arises, has this object been attained? If I am rightly informed, it has not. So far as the western contracts are concerned, I understand that the emigrants brought from foreign countries here, instead of being divided over the whole country, have been placed in one or two spots, in squads or villages, so as to afford no sort of protection to the frontier. As to the other contractors, I am told that they have introduced scarcely a single settler from any foreign country. It is true they have traversed the United States, and perhaps Europe, but I am informed that perhaps two-thirds of the colonists are men who came here at their own charge, and of their own free will, and not on account of any inducements held out to them by the contractors. I understand that some of them were actual settlers here before. The gentleman from Fannin has very ingeniously read a certificate of the secretary of state, to show that a certain contract has been complied with. I will read the certificate. [Here Mr. Van Zandt read the certificate referred to.] Now, sir, does this come here as the certificate of the Secretary of State that these contracts have been complied with? No, sir: but two individuals, acting on behalf of the colonists, have certified this to the Secretary of State. Now, sir, does this prove that the Convention is called upon to act upon it and change its course, a course in my judgment called for by a regard to the welfare and safety of the country? I say that if this proves any thing at all, it only proves that the contractors themselves say that they have done so and so. I hold then, sir, that these gentlemen, so far as the evidence before us is concerned, have not shown this Convention, nor has it been attempted to be shown, that the contractors have complied in good faith with their contracts. But I say, sir, that I do not conceive this matter pertinent to the issue. I admit the position contended for by gentlemen, that if these contracts were originally binding, and by the act of this Convention they are annulled or suspended, so as to prevent a compliance with them on the part of the contractors, they will be entitled to the premium lands claimed by them under the contract. I admit the position to the full extent, that if we prevent their compliance with the terms of their contracts, we are bound to pay them an indemnity; and if the courts declare that these contracts were constitutional and have been complied with in good faith, I am willing that they should have every acre which they can claim. I believe that the country would be benefited by giving them all their premium lands, and suspending the contracts in future. But I am unwilling, if any thing else can be adopted which will suit the case, to go that far. I believe that, under the circumstances, it would be sufficient to require these gentlemen to resort to the courts, and there prove before a jury that they have attempted to comply in good faith with their contracts; and I believe, if successful, they should be amply compensated, and no injustice done. So far as that is concerned, we can provide ways and means by which these gentlemen may have ample justice done them. I believe that, whether constitutional or not, these contracts were wholly inexpedient. They have failed to accomplish their ends, and through them great injustice has been done to a certain class in this country. I allude to that class of men who came here at an early period, and participated in our early struggles, at a time when our fate and destiny were not told. They came then, with the bold heart and ready arm to do battle in the cause of liberty and civil rights. They came here and breasted the storm when at its height; and they are surely entitled to their reward. The government held out to them certain inducements, promising to give them a certain quantity of land on account of their emigration to the country, and a certain other quantity for actual personal services rendered in its defence. Then, if there is any contract existing, I hold that to be a contract as constitutional and legal as any which the government has entered into; and so far as the settlers are concerned, it is one which has been complied with and fully executed. I am unwilling to say to these revolutionary heroes of '36, you must go to the Rocky mountains before you shall have your lands, you shall not locate them near the settlements where the lands are valuable. I say, sir, that they have as much right as Peters and others, and a better; and believing that they have a better right, I am for giving them the precedence. I believe that injustice has been done them; and I believe it is the duty of this Convention to right the wrongs by others done. The objection has been taken, that if we adopt this section, we shall jeopardize the acceptance of our Constitution by the Congress of the United States. I apprehend no such consequence. Suppose it should be said there that we have attempted to interfere with vested rights. The amendment of the gentleman from Fayette provides that all those colonists who shall be here at the time of the adoption of our Constitution shall have their rights guarantied to them. It will be provided also that the contractors who have claims against the government for their premium lands, shall have the right to go into the courts of the country, and there before an intelligent and impartial jury, establish their claims. What more could they ask?

Mr. *Davis* said: It seems to me, Mr. President, that we have to pursue one of two courses; either to let these contracts remain undisturbed, or to suspend them at once. For that reason I shall oppose the resolution offered by the gentleman from Nacogdoches, which proposes that the Legislature at its first session shall pass laws for instituting an inquiry to determine whether these contracts, in the first place, were constitutional, and if constitutional, whether they have been complied with. What, sir, will be the state of the country embraced by these contracts, during the investigation? The settlement of that country must be suspended; no individual can go there to settle in any security; and consequently the occupation of a large and valuable section, in all probability, will be suspended for years. It seems to me entirely useless to adopt the course suggested by the gentleman from Nacogdoches. It might be before the matter would be determined, and I ask again, what would be the condition of the country in the mean time? I am in favor of the section with the amendment offered by the gentleman from Fayette, and with some little further amendment, which I think should be made. A great deal has been said in relation to the right and power of this Convention to abolish these contracts. A great deal of law has been referred to upon the subject, which is familiar to every man who has even a superficial knowledge of the laws of his country. But, sir, this Convention has powers, and can exercise powers which no common judicial tribunal can take upon itself. A judicial tribunal cannot annul a contract; a Legislature cannot; but this Convention has the power to do it; and if it has the power, it can exercise it; and if it is exercised by this body, I say it is reasonable to suppose that it will be nothing but justice. I will ask gentlemen if the people in their sovereign capacity, have not the right to annul these contracts? I do contend, sir, that we have the right and the power; I will use the term here, the *right*, and in all probability upon this occasion we shall exercise that right. But, sir, we propose to go further, and if these contracts are annulled by a solemn act of this Convention, open the courts of the country to the contractors. We propose to permit them to enter the courts, and there investigate the merits and justice of their contracts; and if this Convention shall have done them injustice in suspending them, that the State of Texas shall remedy that injustice. It seems to me that the policy of the country requires the action. Sir, under what circumstances were these contracts made? They were made, sir, at a time when it was deemed important that emigrants should be brought into the country. Well, sir, I am willing to say that those brought into the country by the contractors shall receive some benefit from the contracts, and the contractors some benefit from their settlement. But, sir, what is the case now? It is no longer necessary for the contractors to make any exertions to obtain the number of individuals required of them.

Mr. *Mayfield* said: I have listened attentively, Mr. President, to the debate upon this subject, and I believe that every gentleman upon this floor has come to the conclusion that the objects sought to be attained originally in the creation of these contracts have failed to be reached, and also that the time has arrived when the people of Texas have a full and ample opportunity to speak upon this subject as justice, or right, and as the interest and true policy of the country may dictate. I believe with the gentleman from Nacogdoches, that by virtue of these contracts, the heirs of the soldier, whose bones lie bleaching upon your prairies, are deprived of a privilege they are entitled to enjoy under this government, that of the selection and location of the lands belonging to them. I believe also that he who came to the country at an early day, relying upon the faith and promise of the government, is, by virtue of these contracts, which have not been carried out or attempted to be carried out in good faith, deprived of the right of locating his lands upon a portion of our territory which honesty and true policy entitle him to locate upon. I believe also, sir, that since the year 1841, every movement which has been made upon this subject, and particularly the acts of our government in 1843 in relation to these contracts, has been based upon bad policy, and in some instances upon absolute fraud. I believe further that the time has arrived when the people have the power to check the operation of that policy which has been so deleterious in its effects. I believe that the period has arrived when the people in their majesty and power have the opportunity of checking and putting down a fraud which has been attempted to be perpetrated upon the country, yes, sir, a grand and stupendous fraud. I hold too, sir, that the power of this Convention is ample and complete to speak even judicially upon this subject, and I believe in the propriety of such a course.

With regard to the action of the government in relation to these contracts, I would remark that most men in this country when they speak of the *government*, seem to consider all power as concentrated in the chief magistrate of the state, and the cabinet provided for by law. Such has been the sentiment of the people in former times, that the term *government* has been understood to apply exclusively to Sam. Houston and his cabinet. But, sir, that day and hour have passed. They no longer constitute the government; the people in their might and majesty constitute it. They, sir, have undertaken the accomplishment of the great measure of annexation, and in the accomplishment of that measure, they have called upon their representatives to check the evils brought upon them by that government. The time then has arrived in which this country can do justice to that class of her citizens who have contributed the most to maintain her institutions, and at the same time relieve herself from the operation of a policy which can bring nothing but disgrace, poverty and wretchedness upon your state.

This section will arrest the progress of the evil, and prevent the grasping speculator from sapping the foundation of your institutions in his endeavors to become rich at the price of the labor of the honest cultivator of the soil and the *bona fide* emigrant. We only seek by the principle to be incorporated in this section, to cut off these harpies, who neither work nor labor, nor earn an honest living by the sweat of their brows, whose hands have never been trained to any honest employment, and confer the benefits of the state so far as we can upon the real cultivator of the soil. I entertain the sentiment that the first revolutionary patriots of this country were just men: and when, in the Constitution of '36, they declared that certain colonization contracts were in violation of just principles and derogatory to the true policy and interest of the country, and therefore should cease to have effect from and after that time, I look upon them as having been then actuated in some degree by the patriotism which animated them upon the field of battle. I believe they hoped and expected by a declaration of this kind to secure the honest emigrant in his rights, and to rid themselves of the speculators swarming around the halls of legislation of your country. Those men, sir, who had fought from the first origin of the revolution up to that period in defence of their country, and then held themselves in readiness to leave that assembly and again bear their bosoms to the enemy, were the first to put the seal of disaprobation upon schemes of this sort. I hope, therefore, that upon an occasion like this, those who have read the history of the past, and have seen the benefits which have been conferred upon the country by checking those contracts, which at the time occupied the entire territory of Texas, will not now continue the operation of contracts equally as deleterious to the public interest and opposed to true policy.

The objection which I have to the substitute of the gentleman from Nacogdoches, is this: it does not, I think, reach the question. It imposes it upon the government as a duty first to institute suits against these people, who, in the language of the gentleman's subtitute, have entered into a contract unconstitutional and impolitic in itself. I desire, for my own part, if such be the state of the *facts*, to impose upon them the obligation and necessity of filing their *bills* in equity, and setting forth the allegations upon which they rely. I say, sir, if they are equitably entitled to any *indemnity* under the *terms* of this section, let them as honest men will not object to do, swear to *it*. But by the provisions of the section as offered by the gentleman *from* Nacogdoches, or that proposed by the gentleman from Galveston, *it is* made the duty of the government first to institute suit, and against *whom?* Against men, sir, or at least some men, who, as all admit, have entered into contracts made in collusion and fraud; I care not *whether the fraud* has been upon their part or upon that of your *government, they* have entered into fraudulent contracts. Can we, sir, with *propriety*, impose upon the people the necessity of instituting suit against *men* who have been thus guilty of collusion with your government, *Sam Houston* and his cabinet [though not all of them; I hope]? No, sir. *If they* have entered into these contracts with clean hands, if the *parchment* under which they claim is without blot or taint of fraud, they *will not* be endangered by appealing to the independent judiciary of the *land*: their rights under the provisions of this section will be fully *maintained* and the decree of the court will give them all they are *equitably* entitled to. And they have the advantage in the litigation, though *fraud* may exist. Because, so soon as they show their own hands clean, *then*, sir, the principle of law alluded to by the gentleman from Nacogdoches will apply in their behalf, that they shall not be jeopardized or injured by the act of the government, and if it is the government *which* has acted fraudulently, the courts will be obliged to construe the contract in their favor. Such is the principle of law and justice. They *will* not be injured, but even the act of fraud itself will thus in some degree insure to their benefit, if unconnected with their own acts.

I desire to see this section pass. I am willing to vote upon this occasion to declare these contracts unconstitutional; and I further wish to secure to the *bona fide* settler and cultivator of the soil all the rights which he would have had if the contracts had been carried out in good faith. By doing this, I think we shall not prejudice the rights of any who are entitled to locate their lands upon the public domain.

I have been informed by surveyors of the country, and I believe the records of the land office will show, that men have been precluded from locating in a portion of the country not occupied by any settlers whatever, but in which only lines had been run, and sections laid off under a colonization contract. Now, sir, is it just that those who fought on the plains of San Jacinto; and the heirs and representatives of those who fell at the Alamo and with Fannin, and those whose bones lie unburied at Goliad, should be precluded from locating upon the soil of the country, and that too upon territory merely blazed and run off, and waiting the introduction of emigrants, under these contracts? It seems to me a violation of the public faith, an act of abhorrent injustice. And as an occasion has presented itself, when, as I believe, all the evils connected with these contracts can be remedied without doing injustice to any, and without infringing any principle of international law or justice, I think it is time that the people of Texas should speak out and place this matter beyond cavil or doubt.

I think the cases cited by the gentleman from Nacogdoches and others have no application here under the circumstances. This act on our part, is not that of a mere co ordinate branch of the government, but it is an act of the deputies of the people in Convention assembled, and we refer the subject entirely to the people. It is a kind of adjudication frequently called for by the peculiar circumstances and policy of a country, and one to which so many judicial decisions can apply. In doing this, sir, we shall commit no act of manifest injustice, but shall only perform that which we believe justice and the true policy of the state demand at our hands, in behalf as well of our present population as of those who may follow after them. Unless the Convention act upon the subject in some form or other, what will be the state of things presented? Here will be vast tract and extent of country which, it seems, is already marked out for the emigrant who has not yet left his home in Europe, held up from the operation of the laws. The Legislature can make no disposition of it for the payment of the public debt, or common schools, or any purpose which the interest or prosperity of the country may dictate. And this is to be the consequence, lest perchance we may be doing injustice—to whom? To men who have entered into contracts in violation of law, of palpable and abstract justice, and of the Constitution of your country, and who are seeking to enrich themselves, and at the expense of whom? At the expense of the country at large; at the expense of the representatives of the deceased soldier and patriots; at the expense of every honorable and chivalrous sentiment. Sir, the true policy of every state is to secure first the protection of its own citizens, and an equal and proper disposition of lands to those who will devote the labor of their hands to the cultivation of the soil.

Mr. *Ochiltree* said: I had intended, upon this occasion, Mr. President, to cast a silent vote without mingling in the discussion. But since the gentleman from Fayette has presented a new issue, every feeling of my own, every principle upon which I act, forbids me to be silent. I am called upon as a juror, without evidence and without law, to pass upon the honesty and proper motives of a man whom I glory in calling friend—Sam Houston. He is directly accused of being a party to a stupendous fraud. And this Convention is called upon without law and evidence, without the form of trial, to give their verdict and publish it to the world. For this issue I am not prepared. If a fraud has been committed affecting the rights of the people of Texas, I want the case tried, sir. If I have pressed a man to my bosom and called him my friend who could be guilty of an enormous crime, I want it known. If he has been a party to this great criminal transaction, by which the rights of the war-worn soldier have been bartered away: if he has committed an offence which would stamp him as a felon throughout Christendom, I want it made to appear in characters so distinct that every man, woman and child may read and pronounce his deep damnation there. This is the issue now presented before this House by the gentleman from Fayette. If he believes that such a fraud has been committed, he is justifiable in making the charge; but if I consider it unfounded, I am also justifiable in repelling it. If Sam Houston is guilty, I want it proven; if proven, he is stamped a villain: but if not, he will do as he has often done before, rise triumphant above the petty attacks of his enemies. Sir, if he is tried and convicted, it will not be the first time that he has been tried and convicted by his enemies; but thank God there is a great appellate tribunal which has universally sustained him, which has never yet failed when appealed to, most triumphantly to vindicate him; and in my opinion, though not a prophet or the son of a prophet, that tribunal will do it again. Yes, sir, if he was the government, if his oracles were heralded forth to the world as the laws of the country, he will soon be the government again, and all the powers which can be brought to bear against him, in my opinion, cannot prevent it. All that I want with regard to this matter, is that it should be tried by the judicial tribunals of the country. I am willing to go as far as the farthest in protecting the rights of the citizens and early settlers from trespass. I believe that contract, however, does not prevent any location made before the entrance into the contract. Believing this, I shall vote for the proposition submitted by my colleague from Nacogdoces; although I do not like its features, I do not like its "whereas," or that this Convention should hold a menace over the tribunals which are to adjudicate the rights of individuals. But I will vote for it, believing it the best that will be offered. I want the courts to try and adjudicate these cases; I want them to inquire into the facts, to read the law and hear the evidence. If a fraud has been committed, it has not been by Gen. Mercer alone; it is a double fraud. Whenever it shall be so pronounced by the judicial tribunals of the country, I will then believe it; I will then acknowledge it, but never until then. Let us not, without law or evidence, and upon mere *ipse dixit* of those who, however honest, are evidently governed in some degree by their prejudices, adjudicate this matter in the Constitution. Let it not be said that this body, selected for intelligence, honesty and patience, and sent here not for the purpose of stamping felony upon the parties concerned in colonization contracts, but for the purpose of forming a just and beneficial organic law, have thus abused the powers delegated them by the people. But let us investigate the subject calmly, and leave the decision of the matter to the courts where it belongs: let the judges pronounce upon it; let the legislature be called upon to impose every restriction in future, and be prohibited if you will from extending the time of these contracts; let the parties be cited to appear at the next term of the court immediately following the adjournment of the Legislature, and if they do not appear, let judgment go by default, and let their contracts be pronounced null and void. But I want a fair chance given them to defend themselves. In giving this, there is no injustice done to any; it is what I am always willing to accord to friend or foe; and "let justice be done though the heavens fall."

Mr. *Mayfield* said: I think that it is not the issue before this Convention. It was asserted by a gentleman upon this floor, that a fraud had been committed upon a certain occasion, but he contended that it had been on the part of Charles Fenton Mercer. If, then, I argued, it was true, as he insisted, that Charles Fenton Mercer had been guilty of a fraud upon the country, whereby a large portion of the public domain was to be wrested from the heirs and descendants of those who had fought as gallantly as Sam Houston upon the battle field; it was equally true that Sam Houston himself had been a party to it, because he signed the contract, as I understand, conjointly with Charles Fenton Mercer. Then I only draw my conclusions from the statements of a gentleman I believe equally as devoted to Sam Houston, although perhaps not capable of passing as high an eulogy upon that gentleman, as he is himself. Nor, sir, is the position he assumes correct. He indulges in a sophistry which is not just. The true principle is this: Go to the history of the times and of a people; that establishes at all times a fact, sir: it justifies their action upon any great measure which may affect their prosperity or safety. And when the welfare of a people is involved, when the policy of a State is jeopardized, when the rights of the heirs of the war worn soldier are to be taken from them, then sir, the concurrent history of the times, the pages of that book which chronicles day by day, the actions of your rulers and the administration of the laws, form a volume of testimony, upon which the people are justifiable in acting at any time, without awaiting the slow and tardy operation of the organization of courts of justice to pass upon questions momentously affecting their rights and liberties. Why then would you postpone the adjudication of this question, when the people in their majestey and might occupy their places here in the persons of all those who hold seats upon this floor?

Sir, the gentleman from Nacogdoches is wrong, if he believes that Sam Houston and Charles Fenton Mercer were not equally participators in this matter. Do not the history of the proceedings, the veto recorded in the journals, the very documents exhibited upon this floor, show conclusively that this contract was entered into after the voice of the people had declared it impolitic longer to continue the system? And are we then, sir, passing judgment upon a question in relation to which the facts are not known? Why defer the trial? Where are the just and high grounds for referring this subject to another tribunal than that of the people themselves? And we are here as their representatives. I for one feel all the responsibility imposed upon me as such; and I can see no just grounds for referring the trial to any other tribunal. I believe that the case is fully made out. I believe that all the testimony which can be adduced is now fully before this Convention. There is the law on the table, there the journals of Congress, there the veto of the President, there the contract in black and white. What more can the gentleman adduce? If, then, I am sitting here as a juror, the gentleman will state any other point of evidence which he wants, I will grant him time to send for persons and papers. But let us not postpone the investigation unless there are just grounds for the delay. Are not the people as capable of determining this question through their delegates upon this occasion, as a court of justice will be hereafter to be established? This question has been before them for years. They have spoken upon it through the Legislature of the country, and they desire now again to speak upon the subject here. And all I ask, so far as I am concerned, is that justice may be done to the country, that the equitable rights of her citizens may be maintained, and that a policy which has been found to be deleterious to her interest and prosperity may be checked.

Now, so far as the opinions of the gentleman with regard to the individual alluded to are concerned, I care nothing about them. The gentleman from Nacogdoches says he has been his bosom friend, that he would take him to his bosom, and be proud to call him friend. If such be the fact, possibly the gentleman is not deceived with regard to this transaction. But I do flatter myself that the country at large has been deceived. Because that individual was advised by friends perhaps as warm and devoted as the gentleman himself, of the impropriety of entering into these contracts. If the gentleman has not been deceived, others have been most egregiously and outrageously deceived. But with the merits of this question, these matters have nothing to do. The gentleman knows as well as myself the course I have adopted with regard to that individual. I care not whether he may triumph over his enemies or not; I care not if he shall become the great polar star of this country or any other: it is immaterial to me; it is a matter of indifference to me; and if such be the fate of that man, I would not envy the gentleman the nearest association possible with him. But this has nothing to do with the great and permanent interests of the country; and I care not what may be the destiny of

Sam Houston or of those who may cling to his skirts through both good and evil reports. I occupy the position I do without regard to *him*: and it calls upon me to give a voice and express opinions in my judgment best calculated to promote the true interests, prosperity and glory of my country. I care not whom or whose associations they may affect.

Mr. *Ochiltree* said: I attach myself, Mr. President, to the skirts of no man. But an interest sure of justice, would, I trust, always prevent me from wronging any man; and I assure you, sir, that I would stand as fierce a champion of the gentleman from Fayette, or any other individual in this Republic, were censure to be thus cast upon him without the semblance of trial, as this day it has been cast upon Sam Houston. Sir, I profess not to be his champion: he needs none: he stands too far above the list of competitors to demand a champion in me. But as I have said before, I know nothing in the world with regard to the right or wrong of this transaction. I have never made myself conversant with the facts of the case; and when I was elected by the citizens of Nacogdoches county, this question entered not into the canvass. I was not sent here to disturb vested rights, if such there were, nor to interfere with the smooth and even current of justice and of right: but to frame a Constitution which should preserve, unimpaired, our great liberties and immunities; to form an organic law, which we might hand down without a blush or tinge upon the cheek to our children and our children's children. I was not sent here to make war upon any particular interest, however hydra-headed: I am not a Hercules, nor would I wish to apply the brand or searing iron. All I ask of this Convention is, not do that in a moment of feeling which might be hereafter a blot upon our escutcheon. Why, sir, have we said in the Bill of Rights that every man shall apply for justice and right to the judicial tribunals of the country? The gentleman says, that we have all the wisdom before the House; I do not think so. We have said that the accused shall have the right to summon his witnesses, to confront his accusers, to be heard by his counsel, and shall not be subjected to a summary process. This is all that I ask; and, sir, do I ask too much, when I stand up here among the assembled representatives of the people of Texas and say to them, act not rashly and hastily upon this subject? There may be a badge of fraud: I shall not attempt to deny it; I know not enough of the matter to give a vote upon this occasion. But if I beg only this much, only the more forcibly is the individual alluded to called upon to rid himself of the charge brought against him. All that I ask, all that I have asked, all that I will ask for Sam Houston or any one else, is that he may have a fair chance before the tribunals of the country. When Belisarius, the renowned Roman General, who had so often led the armies of his country to victory, who had driven the enemy from the very gates of Rome, and brought the banners and standards of conquered nations to pile up in the capitol, when from being the possessor of a great fortune, he came to wander a beggar in the streets of the Imperial City, as the story goes, he solicited the charity of the passers by in the simple words, *da Belisarius obolum*, give Belisarius a penny. All that I ask for Sam Houston is, that he may have justice.

On motion of Mr. Lipscomb, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The convention met pursuant to adjournment.

On motion of Mr. M'Gowan, Mr. Moore was excused from attendance on the Convention on account of sickness.

The 21st section of the General Provisions, together with Mr. Mayfield's amendment, were taken up.

Mr. *Lipscomb* said: In stating the reasons why I cannot support the section as reported by the committee and amended by the gentleman from Fayette, I will remark, that it is with exceeding reluctance that I shall vote against the amendment and the section. But I am influenced in so doing by considerations which will not allow me to indulge any preference or any freedom of will which I might be disposed to exercise upon this occasion. It has been a principle with me, which has grown up with my growth, and I believe increased with age, to have something like veneration for individual rights. I believe that those rights, in all countries, governed by law, should be subjected but to one test, that of the ordinary tribunals of the country. I believe that any other mode of adjudication is capricious, and subject occasionally to very great injustice. I have been accustomed to think that whenever a tribunal decides any matter of controversy, it should hear both parties, and weigh the evidence on the one side and on the other. We are called upon here to say, that these contracts, solemnly entered into between the Republic and these individuals, shall be suspended and shall cease, thus directly destroying the contracts, and directly interfering with individual rights. I do not believe that we could, under any circumstances, go into the inquiry whether these contracts were founded in fraud or not. The gentleman who addressed the House in favor of the amendment, sustained it upon the ground that fraud in the beginning made them void *ab initio*. I am willing to say that they are fraudulent and void for the sake of the question; but if I were of that opinion, it would not justify me, standing here as a member of a Convention called for the purpose of forming a constitution embodying the great principles of the rights of man that they were so. All we could do would be to provide a mode of instituting an inquiry as to that fraud. It is wholly immaterial whether they were fraudulent or not, whether constitutional or not. We are not sitting here to decide upon the constitutionality of any matter. In all countries governed by law, there is an appropriate manner for doing every thing.—This course could only, it seems to me, be sustained upon the ground of expediency; and with regard to its expediency, there might be much difference of opinion. Perhaps we have all power in our hands, as to sheer power; but I deny the right we have to interfere with the rights of any man, without giving him a hearing, and an opportunity to defend those rights, by due course of law. In the section preceding, which we have adopted, we assert and sustain this great principle. I will read and call your attention to it:

"Sec. 20. The rights of property, and of action which have been acquired under the legislation and laws of the Republic of Texas, shall not be divested;" &c.

I voted for the 20th section as it passed, not believing it would give any constitutional or legal effect to the principle there declared, but merely as a declaration of the great principle which should prevail in all countries, that vested rights should not be interfered with. And now, in the very next section, we are called upon to divest a right. We admit it to be a contract, and are called upon to say it shall be suspended and cease. With all due respect to those who drafted and sustain this section, it does appear to me inconsistent and unfortunate that the two sections should be placed in juxtaposition, so that he that runs may read. It militates against this great principle which we hear asserted and declared to the world, and against the morality which should enter into all considerations of this sort.

There is another objection, which is, with me a prominent one. It will not be denied by any member of this House, conversant with constitutional laws, that if we were already in the Union, and should offer an act of the Legislature or the State, embracing this very provision, no constitutional lawyer would say that act would be held to be constitutional by the Supreme Court of the U. States; any lawyer would say it was void, unconstitutional and void. We are told, however, that we are not yet in the Union, and may engraft into our Constitution a principle repugnant to that of the U. States with perfect safety—that there is no power that can revise it—that the Supreme Court cannot revise it.—I do not think so. I believe that if we should be received, and if there should be any principle in our constitution conflicting with that of the United States, it will come under the cognizance of that court, and be declared unconstitutional. But suppose we hold that it would not be subject to the revisal of the Supreme Court, and that, if we go into the Union now, it cannot be questioned hereafter. Are there not just grounds to believe that those in the U. States Congress, who are opposed to the annexation of Texas, as one party, and those who may conscientiously [illegible] this principle repugnant [illegible] the constitution, as almost [illegible] may, when acting together, (for we have not many friends to spare in the Congress of the U. States,) form a sufficient force to defeat our annexation? Why so? Because this section is repugnant to an express provision of the constitution of the U. States. The latter clause of section 10th, of the first article of that constitution provides that no State shall pass any law impairing the obligation of a contract. Now, is it within the bounds of a reasonable probability to suppose, that those men who feel indifferent towards us at the least, and those who may conscientiously believe this to be in violation of the constitution, would not seize hold of this provision and make it an objection to the reception of our constitution? Would they receive our Constitution under these circumstances? Would they take in a people as an independent State, who should have engrafted in their constitution a principle repugnant to that of the U. States? I think they would not. On a former occasion, I declared that I would put it to myself, and I believe that as good a way of reasoning as any other, what I would do under similar circumstances. And my best reflection and candid investigation brought me to the conclusion, that if I were a Senator or member of Congress, and uninfluenced by any feelings for Texas, I should say I would not receive this constitution—that I would vote for rejecting it, if it contained that provision. Now, believing as I do, that annexation is paramount to every other consideration but that of power, I would make any other sacrifice to obtain it, and this, if I am not mistaken, is the prevailing sentiment of the people of Texas; they will risk any thing short of disgrace and dishonor. Some gentlemen say these contracts were *void ab initio*, and, therefore, not contracts; and yet they call them contracts in the very declaration. This provision says they shall cease, and that it as much destroys their validity as if it should say, they shall be void. Believing therefore that we should jeopard [illegible] our admission into the Union with this constitution, no consideration could induce me to vote for this section as reported. And I have the same objection to the amendment. I will go as far as any one can, who entertains the same opinions that I do, to have these contracts [illegible] by due course of law if they have not been complied with, [illegible]. I am willing to enjoin it upon the Legislature that they shall [illegible], and that they shall not relieve the contractors from any forfeiture which they may have incurred. I will be for enforcing the contracts to the letter. But let the courts [illegible]— [illegible] we do only one side of [illegible] [illegible] shape. If we have got into difficulty, [illegible] but sustain our honor and keep it [illegible] we should be impoverished thereby. Strong appeals have been [illegible] We have been told that these contracts [illegible] of the widow and the orphan [illegible] in defending the country [illegible] have been postponed to the rights of new comers and contractors who have come here for mercenary purposes. If so, great injustice has been done. But let this matter come before the proper courts, let them inquire into it; and I have full confidence that they will say that those contracts which violated previously existing contracts were void on that account. I do not know the extent of the influence possessed by these contractors, but I fear it. In fact, I fear every thing when a question can be raised upon the acceptance of our constitution. The character of one individual, whose name has been handled very roughly to-day, once stood very high in his country's annals: few men have stood higher for virtue, talent and political influence than Charles Fenton Mercer.

If he had that influence now, and we should undertake to rescind his contract, we cannot expect that he will not attempt to prevent it. The influence of all those opposed to us will be combined, and we know from the newspapers that the northern people are opposed to our annexation, and are looking out for something to take hold of. It is true they are not looking in this quarter: they are looking for something relative to slavery—but the same men will lay hold of any other objection just as soon as that. Their object is to defeat the annexation of Texas, and they will defeat it if possible by availing themselves of all the means within their reach. And I can tell gentlemen, as lightly as they think of this matter now, they may think of it hereafter with regret; as I know that most of those who are now supporting this provision are devoted to the cause of annexation. I had intended to rest content with giving my vote against this section, without making any remarks upon the subject, but the more I have looked at it, the more fully satisfied have I become that it is repugnant to the constitution of the U. States, that it is in violation of the principles of abstract justice, and would be a ground for our rejection; and I felt it my duty to give, in a brief way, the reasons why I shall vote against it.

I will remark here, with regard to the provision alluded to in the constitution of the Republic of Texas, that our situation is different from that of the body alluded to. That convention was making a constitution for an independent people; and there was no power which could revise its acts. It is not so with us. We are forming a Constitution to be subject to the Constitution of the U. States; and I do hope that we shall carefully avoid inserting any thing here which may be repugant to that instrument.

Mr. *Baylor* said: As I shall be called upon in common with other gentlemen of the Convention to give a vote upon the section under consideration, I think it my duty briefly to state my reasons for the vote I intended to give upon this occasion. As we often see, sir, upon questions of the greatest magnitude and moment to the country, individuals distinguished for their age and experience come to very different conclusions.

I have no doubt myself that these conclusions are honestly entertained, and I have a great respect indeed for the opinions of those who differ from me upon this occasion. I have known some of them long, and in their integrity I have the greatest confidence. And I trust and hope that I have as high a regard for the sacred nature of the obligation of contracts as any other; and I fully accord with the sentiment that they ought not lightly to be touched: that they ought not lightly to be annulled, cancelled or set aside. Nothing short of the highest necessity, a necessity, sir, imperious in its character, ought ever to induce a deliberative body to place their hands upon a contract. I do not myself view this question as some gentlemen have done. For I do not think that the question of fraud has any thing to do with the case now under consideration. I hold, sir, that, in the absence of all proof and all investigation of the subject, the presumption ought to be indulged by every gentlemen upon this floor, that, so far as the contractors are concerned, they have acted in good faith, and honestly complied with their contracts. So far as fraud is concerned, it is a well established and settled principle that we never can presume it. We are not authorized to go into the field of conjecture; fraud is a question of fact, and like all such questions, the fact must be proved. It consists in the intention; and I say that, in the absence of all proof, I am disposed, so far as I am concerned, to come to the conclusion that these individuals may have complied in good faith with their contracts up to the present moment, and to suppose that these contracts were made in good faith, and that there has been no fraud in the case. At least I am charitable enough to come to these conclusions until I see some facts or developements to authorize a different opinion. But I am disposed to look upon this question as one of policy, as one of a case of necessity. So far as I am able to judge of the matter, if we suffer these contracts to remain as they are, the consequences to the country will be distressing in the extreme. If we take into consideration the number of these contracts, the immense districts of country which they sweep over from the Rio Grande to the extreme line of the frontier between us and the United States, if we contemplate for a moment the vast amount of territory embraced within this entire mass of contracts, we shall find that these individuals are getting a scope of country sufficient for at least two, if not three states. Well now, by the terms of these contracts as I understand them, the contractors and their associates are not bound ever to alienate these lands, but they and their successors can hold them through all time to come. We have not acted as wisely in this as the Mexicans, of whose policy and wisdom we have so poor an opinion. They took this precaution to say that the Empresarios should, within twenty years, sell the larger portion of their premimum lands. Here they can hold them for all time to come. What an attitude the country will be placed in, a few individuals and their successors owning entire sovereign states? Will the consequences not be most distressing and ruinous? Look for a moment at the

State of New York: see the riots and disorders, the feuds and contentions which have grown out of a similar state of things there. The venerable gentleman from Washington tells us that he is extremely solicitous to maintain the national faith of the country. I too, wish, so far as concerns the course of Texas, that her steps may be directed by a regard to the nicest principles of honor. While I accord with that sentiment, and would be as far from favoring repudiation as any gentleman, I do not conceive that the doctrine of repudiation is at all involved in the proposition now under consideration. For if I understand the history of this subject, it is this: that those repudiating states, in their madness and folly, have borrowed large amounts of capital in Europe and elsewhere, and seeing that they have got into difficulty, now contend that they ought not to pay the money at all. Is that the proposition before us? We simply say that we believe these contracts will be ruinous to the country; that justice and policy call upon us to cancel them. But do we not at the same time give the emigrants their lands, and say to the contractors that the halls of justice shall be thrown wide open to them, that they may get ample compensation for the amount of damage they may have sustained? Gentlemen say it is true that the Convention may have the abstract power to do this, but they deny the right. Now, so far as I am informed, the powers of a Convention have never been well defined. We are thrown back upon the principle that we are here representing the majority and sovereignty of the people. We are acting upon principles superior to any Constititution; principles above and beyond all Constitutions, because we are framing the fundamental law of the land, the Constitution itself. While I make this remark, I wish it distinctly understood that I believe that neither this Convention nor any other deliberative body can ever feel itself authorized to act in any other way than as governed by the great principles of right and wrong. There is a moral fitness in things, which every body, and which this Convention are bound to respect, if just men. While I subscribe to this principle, I do not see that we are interfering with it or transcending our powers, in annulling and setting aside these contracts. Because we say that we will give the emigrant all that he is entitled to, and throw open to the contractor the courts of justice, that he may recover any amount of damages he may sustain. The gentleman from Washington attempts to draw a distinction I am totally incapable of myself. It will be recollected that the Convention which sat at Washington annulled two gigantic contracts. Well, he tells us that the United States has agreed to take us into the Union with this feature boldly standing out in relief upon our Constitution. That government cannot complain then if we perpetuate the annulling or setting aside of these contracts. I cannot see the force of his argument. He attempted to draw a distinction between the case of a sovereign people framing a Constitution for an independent state, and that of one coming into the Union with a Constitution subject to a paramount Constitution. But I contend that there is no soundness in the argument, to say that though the government of the United States saw that the Convention at Washington had annulled these gigantic contracts, it supposed for a single moment that we would perpetuate this violation of contracts under the Constitution we are now framing. Because, if we do it, to set aside the contract of Mason under this new Constitution, is just as much a violation of the principle referred to, as to set aside that of Peters, Mercer, or any body else. The only difference is, that in the one case we are perpetuating the violation of contracts by a former Constitution; we re-enact this violation in the new Constitution, and continue the evil. That is the only difference. For so far as the proof is concerned, with the exception of the mere declaration of the old Constitution itself, this contract of Mason's may be just as good as any since made. I cannot see any difference. It seems to me, Mr. President, to be the true policy for this Convention to annul these contracts. But, sir, in doing so, I hold that we ought to be governed by those principles of justice and liberality which ought to characterize any good people. It is in vain, because they have been made, to now say that they are impolitic and ruinous to the country. If so, it was folly and madness to make them. And for aught that appears, if we had not annexation, they might be very politic; it might be very important to have this vast wildernes settled up by those who could defend the country. But inasmuch as we have annexation now, the whole policy of the country has changed. A friend requests me to take some notice of the constitutionality of the section under consideration. Now I believe there is no constitutional lawyer here who does not know, that when a state is admitted into the union, its legislature has no power to annul contracts. From the case of Dartmouth College down, all the decisions go to the same point, that a Legislature has no power to set aside contracts. But if we look at history, we shall find that they have generally done so, without granting any compensation, or furnishing the party with any means of resorting to the courts of justice to get adequate compensation. They have repealed those corporations without making any adequate or just compensation. But I hold that there is a wide difference between a Legislature doing this, and the people by their deputies assembled in Convention. The Constitution of the United States says that no State shall do this thing; and I suppose Texas is not a State yet. It does not say that no convention shall do it. Let me ask, sir, for what reason we have incorporated in our constitution a section providing that private property shall not be taken for the public use without adequate compensation? It is based upon the idea that the public good may require such sacrifices to be made, and that private interest must yield to the public good. Where is the difference between thus taking private property and annulling such contracts as these, if we make a just compensation? I can see no difference. Here we propose to do no more than to annul these contracts, and opening at the same time the courts to these indviduals, that they may receive a just compensation if injured thereby. I do not perceive that the Constitution of the U. States will be injured by this measure, and I would myself, so far as I am individually concerned, be perfectly content to place in the constitution a clause that nothing therein contained should be so construed as to contravene any provision in the constitution of the United States. Then the anticipated crusade against our constitution in the Senate and the lower House would be met at once by this sweeping and general clause, and we should have ample scope for our deliberations, and full power to adopt any principles which the happiness, well-being and true policy of the country may imperiously demand. In any view I can take of the matter, it seems to me that these contracts ought not to continue in existence. I should be perfectly willing to consider them as having been complied with up to the present moment I am willing to give the contractors the premium lands to which they are entitled up to this time, and something more. The resolutions of the Congress of the U. States give us the entire jurisdiction and control over our domain. they calculate that it will pay our public debt, and say that we may dispose of it as we think proper.

In conclusion, I wish it distinctly understood, that I do not wish to do any thing which might be considered unjust or illiberal so far as the contractors are concerned; but I never can consent, as a humble representative of the people to suffer cancers like these to remain upon the body politic; for one, I have the nerve to apply the caustic and the knife, and hazard all the consequences.

Mr. *Howard* said: Mr. President, that which distinguishes the government of civilized from savage life, is its respect for rights. With the barbarian might makes right; but it is the boast of civilization, that by a government of laws wisely and uniformly administered, protection is afforded and justice,administered equally to the strong and the weak. But when government is diverted from this end into an engine of opposition, and individual obey, it degenerates into tyranny and becomes a curse.

It is proposed by an arbitrary edict of this Convention to abrogate and annul the contracts for colonization into which the Republic has heretofore entered. It is urged, that, we should pursue this extraordinary course; 1st, because these contracts were unconstitutional; 2d, because they were fraudulent; and, 3d, because the public policy of the country has changed since they were entered into.

In order to support this measure, the advocates of it have found it necessary to maintain that this Convention has power to do all things, unrestrained by any rule save its own notions of expediency. I deny this position at the very threshhold of the inquiry. The idea of *unlimited* power has no anchorage on this side of the Atlantic: it is associated only with the bowstring of the Sultan, and the knout of the Czar. To maintain such a position is to confound *right* with brute force.

While it is admitted in the discussion, that the Legislature, even in the absence of a written Constitution could but rightfully exercise such a power, it is insisted that this Convention, as the depository of all the people, has no limit but its discretion. I deny the position. The Convention, as the depository of political power, can, in the nature of the case, possess no more power than a majority of the people. Admitting for the sake of argument, that the people have delegated all their governmental power to the Convention, the power of the latter cannot exceed that of the people, which is the right of the majority to adopt such measures as will ensure the peace, security and happiness of society. Whatever may be the brute force of the majority, I deny its power as a question of right, under the pretence of governing, to adopt such measures as tend to the dissolution of society and the destruction of social order. I maintain, that government, whether the ultimate sovereignty be lodged in the hands of a few, or the whole people, has no right to violate the laws of nature or the social compact. When man submits himself to the laws of society and government, he surrenders so much of his natural liberty as the legitimate ends of society and government require; but he does not yield that which would be destructive of all society and his own existence. In England, where the Parliament is declared omnipotent, it is a well settled axiom of the law, that a statute contrary to the law of nature is void, and need not be obeyed [1]. Nor is this the mere speculation of the philosopher in his closet. It is a part of the jurisprudence of the country. In the cases of Calder & Ball, Fletcher & Peck, and Terset & Taylor [2], the Judges of the Supreme Court of the United States hold that a law violating the social compact, or natural justice, would be void on general principles, independent of constitutional inhibitions. And, the illustration they put are the cases, when the Legislature should declare an act criminal which was innocent in itself; or make a man a judge in his own case; or take the property of A and give it to B, all of which they say would be void on general principles without the aid of the Constitution. The great commentator on American law, asserts that the right "to acquire and enjoy property, is a natural right;" [1] Burlamaqui, declares, that, though the Legislative be a *supreme*, yet it is not an *arbitrary* power; but on the contrary, it is limited in several respects. Again, he says, the sovereign has rights "over the estate of his subjects principally in three different manners." The first is regulating the use of it by law. The second, raising subsidies and taxes. The third is the right of the eminent domain. It should be recollected that the author is treating of the exercise of power in monarchial governments. It is certainly a singular opinion, that government, in a country of written Constitutions is less restricted than in absolute monarchy; or that the majority of the people

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1. 1st Co. Litt., 341, a.; 1st Bl. Com., 58, 41, 43; Legal Maxims, 17.
2. 3d Dallas, 386; 6th Cranch, 87; 9th Cranch, 43.

may tyrannize through the means of the majority to an extent beyond the recognized power of the Tudors in an age of absolutism. If so, we have made but small progress in the science of government on this side of the Atlantic. Oppression is but sanctified because done in the name of the people. The two first grounds assumed for annulling these grants are, that they were fraudulent and unconstitutional in their inception. It is not denied that these are purely judicial questions; but it is said that the Convention possesses all power, if it sees fit to exercise it, legislative, judicial and executive. Be it so—if it proceeds as a court, it must clothe its proceedings with judicial powers. If it proceeds to annul a grant on the ground of fraud, the party must have his day in court. He must have notice—time to procure his witnesses, and be heard at your bar in defence of his rights. It is a familiar principle to every lawyer, that an exparte judgment, without notice, actual or constructive, is void, although the court, with notice, would have had jurisdiction over the subject matter, it is a universal principle, founded in natural justice from which an exparte judgment of this Convention obligating a private right can obtain no exemption.

How is it proposed to conduct this proceeding? Fraud is charged in debate with the wildest declamation without the shadow of notice—without a tittle of proof—without so much as taking evidence before a committee, it is proposed to annul the solemn contracts and grants of the government! I say nothing at present of the monstrous injustice of so vile an act of repudiation—I deny the *power* of this Convention to perpetrate the deeds—I controvert the power of this government acting through a Convention on a charge of fraud, to resume its own grant by an *exparte* proceeding which denies a hearing to the grantee.

The position, that these colonial contracts are unconstitutional, is liable to the same objection. It is a judicial question, and must be judicially examined, after notice and a hearing allowed to the grantees— But the position is clearly unfounded. It goes upon the ground that inasmuch as there was a general lien upon the public lands for the payment of the soldiers and the other public creditors, the grants to the contractors were unconstitutional. It is not pretended that there was any specific lien on the particular territory covered by these grants. The report of the General Land Office shows, that after discharging all military claims there will be left 180 millions of acres of public domain, which will be more than sufficient to discharge a public debt, which no one estimates at more than ten millions. These contracts are grants of all the territory within certain specific and descriptive boundaries to be reserved for settlement by the grantees of a certain number of families in a particular way, and within a certain time, to which families the contractors are to give not more than 640 nor less than 160 acres of land, with a further provision, that to the government is reserved every alternate section, with a right to the grantee, in some of the contracts, to purchase the other half section, by paying [illegible] dollars in cash [illegible] in the [illegible] of the [illegible] public. It will be admitted that the contractors must render sufficient consideration to support the contracts — And in contemplation of law, at least, the advantages arising from the settlement of one half of the land, with an industrious population, will augment in an equal degree the balance of the other half which is reserved to the government. It will also be presumed that the sum [illegible] per section, which the contractor pays, would be an [illegible] compensation, [illegible] the whole [illegible] settlement had been made. In point of fact also, it is questionable whether the government could have sold the land for as much as its own liabilities, as the contractors have stipulated to pay. My own opinion is, that these contracts have [illegible] ed the ability of the government to discharge its debts, and the [illegible] will be realized from the alternate sections of a population [illegible] could have been obtained from the whole of a district which would have remained for many years a mere hunting ground for the Indians. But whether the policy and the contracts were wise or unwise in a financial point of view, cannot affect their validity in any legal bearing of the question, as it is not doubted that the Legislature had the right to sell the public domain, and that these grants were made under its authority expressly delegated for that purpose. Admitting, however, for the sake of argument, that the law and grants are clearly unconstitutional, still I maintain that the question cannot be examined in this form, but is open to judicial inquiry only.

It is urged by the member from Fayette, Judge Bayler, that since these contracts were entered into, annexation has taken place and the policy of the country is changed, and that we have a right to annul these contracts and take the land for public use.

It is an elementary principle of international law, that a revolution or change of government does not affect any pre-existing private rights. This principle has been repeatedly affirmed by the Supreme Court of the United States in passing upon French, Spanish and British grants. [Vatel, B. 3, C. 15, sec 200; 7 Peters. 51.]

The change of policy can give no additional power to the new government over prior contracts and grants. The new government in this respect occupies precisely the condition of the old without acquiring any more jurisdiction.

The right to take private property for public use, or the right of eminent domain, is a different principle, and stands on other grounds. The principle itself is one of limited character, confined to the right to take in war the property of individuals necessary for the public use, and in other cases, not extended beyond the right of way and its incidents, and the right to take and destroy property in cities for the public safety. It must be clearly a case of public use and not a measure merely to swell the public treasury or to consult some fancied public policy, like the measure proposed. And Chancellor Kent states the uniform modern doctrine to be; that when private property is taken for public use, a compensation must *first* be given or provided, or the act of appropriation is void. The section under consideration provides no compensation, but only the desperate remedy of suit against the State for indemnity, without any means of payment in case of a recovery.

The same jurist says, that " it undoubtedly must rest, (a general rule,) in the wisdom of the Legislature to determine when public uses require the assumption of private property; but if they should take it for a purpose not of a public nature, as if the Legislature should take the property of A. and give it to B, or if they should vacate a grant of property, or of a franchise, under the pretext of some public use or service, such cases would be gross abuses of their discretion, and fraudulent attacks on private right, and the law would be clearly unconstitutional and void."—2d vol. Kent's Com., 340.

Who does not see that this is an attempt to vacate a grant of property under the fraudulent pretext of public use? It is a bare-faced attack on private right, without a pretext of public use, which always proceeds on a supposed public necessity. There is no necessity for taking this land for the public use, for the State has without it 180 millions of acres of vacant public domain. It has no use for it, even as a territory, to populate. On the principle of taking property for public use, it would be much easier to justify a seizure of all the money and personal property of its citizens. For such an act, it might plead some necessity in the wants of the public treasury; but for an appropriation of these wild lands, of which she already has more than enough, no justification can be shown. It would be an undisguised and unjustifiable act of public aggression. Let us see the practical operation of this principle as sought to be applied by the learned gentleman. There is no provision in the Constitution of the United States, which forbids Congress to pass a law impairing the obligation of contracts.

Suppose, then, some anxious aspirant for the Presidency, surveying the vast valley of the Mississippi, studded with cities and towns, and teeming with opulence, should say to the balance of the Union, "we sold this country for a mere trifle, since then the Indian has been expelled, the forest subdued and the face of the land crowned with the riches of civilized life. It is obvious *the public policy* has changed—We want this country re-transferred to the public domain to raise means to pay the public debt and carry on splendid national works. There is no difficulty in the way, for it has been discovered by a learned Judge in Texas that we have a right to annul our former sales and take the country for "public use?" And if the principle insisted on be correct, the government might sell the same territory, and then resume the grant as often as the speculation should be found profitable.

The Convention is urged to prompt action on this matter by many of the gentlemen who have addressed you, sir, for the reason that when we shall have been admitted into the Union it will not be in our power to take such action in consequence of the prohibition of the Federal Constitution Sir, I maintain that we are now restrained by that great instrument from the adoption of the measure proposed. The Constitution of the United States forbids any *State's* passing a law which impairs the obligation of a contract. Texas is not at this moment an independent State. We have accepted the resolutions of annexation passed by the Congress of the United States We have already parted with a portion of our sovereignty. We cannot make a separate treaty with Mexico, nor enter into alliances or separate treaties of commerce with foreign powers. The resolution declares "that Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be created into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in Convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union." The consent of the existing government has already been given, the resolutions have been accepted by this Convention, and that acceptance signified to the cabinet at Washington, and the troops of the Federal Government, have taken possession of the country. We are created into a *State* with a compact for final admission into the Union as soon as our Constitution shall be presented, and be presented with a republican form of government. We come, therefore, within the language of the prohibition of the Federal Constitution, which declares that "no State" shall pass any law impairing the obligation of a contract. We are under the flag and the protection of the Federal Government.

Whatever may be thought of this view of the subject, I cannot be mistaken in the position that no clause in a State Constitution can be valid, which violates the Constitution of the United States. Such a provision could have no higher sanction than an unconstitutional act of a State Legislature. It will not be contended that it is in the power of Congress to make valid a State law which violates the Federal compact. Neither is it in the power of a State, by revolutionizing, throwing off the ordinary forms of legislation, and acting through a convention, to pass a law impairing the obligation of a contract. The resolution of the Convention would still be a law, and the law of a *State* It is not in the power of a State to evade the prohibition by a change of forms or names The Constitution of a State is a material part of the law which admits it into the Union. It must be obvious, therefore, that a section in it, contrary to a provision of the Federal Constitution, as well as the act of Congress ratifying it, would be unconstitutional and void, as much so as an act of the Legislature passed a century after its admission. They both stand on the same footing as *laws* of a State. For it has often been decided that each section in an act of the Legislature which presents a distinct and independent proposition is a law, and that one section may be valid and another void, and in relation to a constitution the rule is the same.

This section of the General Provisions of the Constitution would be the law of a State, and if valid of the highest import, because embraced within the organic law itself. Does it impair the obligation of a contract? In the cases of Fletcher and Peck, Terret and Taylor, and in the case of the Dartmouth College, it was decided that a grant of land by a legislative enactment, or by virtue of a law, by the legislature, was a contract, and protected by the constitution, whether the grant was executory or executed. That it amounted to a contract on the part of the State, that it would not resume the grant the State laws intended to have that effect were pronounced null and void. The further ground was taken, that the party granting could not annul its own grant for fraud or illegality, but that it could only be done by judicial enquiry. The 22d section of the General Provisions is a profound law, which proposed to annul and resume grants heretofore made in pursuance of an act of the Congress. It would therefore, be a law impairing the obligation of a contract, enacted by the party making the grant, and in every view of the case, would be a nullity.

We are asking too much of the Congress of the United States when we require them to ratify a State Constitution which contains provisions violating the Constitution of the Union. We are asking them to ratify what, by their oaths, they are bound to reject. By such a course we are jeopardizing our admission with the Union and the whole measure of annexation. Are gentlemen willing to take this responsibility for the sake of adopting a resolution which would be void, if inserted in the constitution? When the whole effect of it could only be to delay the ratification of the constitution, and might result in its final rejection, and the loss of this great measure?

The effect of the measure proposed upon the contractors would be precisely contrary to that which is desired by its advocates. So far from operating to annul the grants, and deprive the contractors of their premium lands, it would discharge them from the conditions and all obligations to complete the settlement. It was decided by the Supreme Court of the United States, in the case of Arredondo, upon well settled principles, that, when the government, by its own acts, rendered it impossible for the grantee to comply, he took the land absolutely, and freed from his part of the contract. There is no doubt that the adoption of the 22d section would have the effect to release the contractors from the introduction of the settlers, and at the same time enable them to demand not only their premium lands, but all the advantage they might have derived from their contracts with the settlers in being authorized to stipulate for giving less than a section to a family. In other words, they would receive all they could possibly have received from a full compliance. It is not the part of wisdom for the State to place these contractors in such a position, that we cannot take advantage of any failure on their part to comply with the grants. If they are fastened upon the country, it is manifestly for the interest of the State that the population should be introduced, and the line of our frontier extended.

Much declamation has been introduced into this subject which does not belong to it, and is entirely foreign from the question in debate. We are constantly reminded of the poor soldier who by these contracts has been deprived of this territory upon which to locate his lands. Sir, there is still a boundless territory open to his claims. But the poor soldier has in reality little interest in this question. Unfortunately, he parted with his claim for the small pittance which his present necessities demanded, and this land scrip is now in the hands of a few speculators who wish to destroy these grants that they may sieze upon and appropriate the country which the capital and population introduced by these contractors has rendered valuable. It is not the soldier, but the speculator, who is clamorous for the destruction of these grants. For my own part, I had rather see the country populated with small proprietors, actual cultivators of the soil, than to see it monopolized by a few large landholders who will retard its settlement and growth The country appropriated by these grants is remote from market, and far better adapted to small grain and grazing than the growth of the heavy staples. It is a country which offers many more inducements to the farmer than the planter. In the hands of an industrious population from the western and northern States, it will become prosperous and opulent. It is true that a large portion of the emigration to this region is European; but the honest and laborious German has always been found a valuable citizen in every part of the Union. His industry, his love of social order and his attachment to our institutions are proverbial. He will force back the savage and carry civilization into the useless and unproductive wilderness. Let us then maintain the interests and honor of the State by upholding right, and rejecting a measure, which if adopted, would cover us with indelible disgrace. I do not object to any judicial enquiry into the validity of these contracts, but I protest against this arbitrary edict of confiscation, alike tyranical and impotent.

On motion of Mr. Van Zandt,

The Convention adjourned until half-past 8 o'clock, to-morrow morning.

Tuesday morning, Aug. 19th, 1845.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Messrs. Anderson and Mayfield filed the following protest, which was ordered to be spread upon the journals:

To the Hon. President of the Convention:

The undersigned, as a delegate from the county of Gonzales, availing himself of an essential privilege, asks leave, most respectfully, to spread upon the journal of the Convention, his protest against the adoption of the first section of the legislative report, together with the reasons which influence him in so doing.

I conceive that by the adoption of the section referred to, many of the rights of individuals who are now residing in this country in good faith, with strong attachments to free institutions, are denied the most important privilege of aiding in the promotion of those who are to represent and determine upon the great interests of the community. It is true, the section referred to, extends the privilege of franchise to all those who may have strictly complied with all the requirements of the naturalization laws of the Republic of Texas, up to the adoption of this Constitution; but the true condition of the country, as well as the peculiar situation of individuals, justifies the assertion, that there will be many who will be wholly excluded from the right of franchise, by a strict adherence to the principles contained in the 2d section; (and that a strict construction will be required, there will be but little doubt,) although they have largely contributed to the support of the government; and have not only acquiesced in the change of our political institutions which is going on, but have cheerfully given their support toward the completion of the great measure for which we are assembled.

It would be unnecessary for me, at this time, to submit individual instances of that class of individuals who have become the actual cultivators of the soil of Texas—who have either deemed it unnecessary to take the oaths of allegiance, or who, ignorant of their duties and rights, have heretofore neglected it, and will continue in their present state up to the time of the adoption of this Constitution, and who, consequently, will be disfranchised by the adoption of the section referred to; which restrictions, as imposed by the section, operate, as I consider, with but little benefit to the country, and to the great injury of private rights.

Another and an imposing reason urges itself upon the consideration of the section so adopted,—which, it seems, if strictly observed, would force conclusions against the propriety and policy of the section.

It is conceded by all who are acquainted with the reserved rights of States, and those which are ceded, that every State in the Union has the inherent right—the undenied power—to pass such laws, or to incorporate into its Constitution such provisions as shall constitute a voter, or qualified elector, without regard to the naturalization laws of the United States. Then, if this be the fact, I consider that portion of the section which uses the term "citizen of the United States" wholly unnecessary, and utterly impolitic, because it is anti-democratic, and adverse to the advancement of free institutions, and the spirit of the times.

Under the section referred to, all those who are not citizens of the United States, and emigrate to Texas after the change of government, will be unable to exercise the inestimable right of freemen—the right of voting—until they shall have become citizens of the United States, which requires a period of five years, together with other indispensable duties. So long as Texas remained an independent government, a provision of this kind would be very valuable. But even under the Constitution of the Republic of Texas, when we had not that solid protection which the United States exerts over all its parts, and which will be successfully extended to us, against all internal and foreign invasion upon established rights, we have experienced no evil; but, on the contrary, a hardy and industrious population, from the liberality of our institutions, have been invited to participate in all the benefits resulting from free government, to the development of our riches, and to the finding out new objects upon whom to bestow the rights, the comforts and the great blessings of free principles. If ever the reason did exist for a period of probation so long as five years, that reason has now ceased; and the reason ceasing, the effect ought to be felt no longer.

I think the fears of those who consider European population as dangerous to our institutions, are utterly unfounded: no other than the spirit which stimulated our forefathers, stimulated them: if there be any other, it is that of interest; and it is certainly the interest of every individual, to enter readily, or essentially, into the very spirit of the institutions which are to govern him.

The result of the policy of the section, is to close the doors which have heretofore been open to emigration; and if it should not have that effect, it will deny the essential right of being represented upon important interests—when, at the same time, they must contribute to the support of the existing government. A shorter period of time than the one proposed, would have produced all the benefits contemplated by the section, and would have extended to individuals rights which were just and compatible with free and liberal principles.

Then, upon the ground—first, that it affects the present inhabitants of the country, who are actual cultivators of the soil; 2d, those who are here at this time, and have not, nor will not, be competent voters; and lastly, its exactions upon all who may seek Texas as their final resting place from tyranny, persecution and distress, are sufficient reasons to influence me in the course pursued; and, in due deference to the opinion of the Convention, he subscribes himself,

JNO. D. ANDERSON.

I concur in the objections above urged, to the section alluded to, for the reasons assigned; and further, because it leaves the rights of a large number of actual inhabitants, and cultivators of the soil, to hold and inherit land, subject to doubt and the interpretation of principles of international law; and I do, therefore, accordingly, respectfully protest against its adoption.

J. S. MAYFIELD,
Of Fayette.

Mr. Darnell, chairman of the select committee to whom was referred the 18th section of the General Provisions of the Constitution, together with the report of the majority and minority of the Judiciary committee, on the same section, made the following report:

Committee Room, Aug, 18, 1845.

To the Hon. THOS. J. RUSK,
President of the Convention:

The select committee to whom was referred the 18th section of the article on the General Provisions of the Constitution, together with the substitute for the same reported by the majority and minority of the committee on the Judiciary, have had the same under consideration, and have instructed me to report and recommend to the Convention, for adoption, the following substitute for the section.

N. H. DARNELL,
Chairman.

SUBSTITUTE.

"All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property, as that held in common with her husband."

Which was laid on the table, to come up among the orders of the day.

Mr. Ochiltree, chairman, &c., made the following report:

Committee Room, Aug. 19, 1845.

To the Honorable THOS. J. RUSK,
President of the Convention:

The committee of Revision, &c., have had the Bill of Rights, the Judiciary and the Executive Articles of the Constitution under consideration, and have directed me to submit the accompanying report.

The committee would, with much respect, state that they have ventured to go somewhat further than the strict letter of their authority would warrant, in recommending to the adoption of the Convention, an entire separate article, providing for the proper distribution of the powers of the government—which article, they would suggest, should follow the Bill of Rights. to be succeeded by the Legislative, the Judicial, the Executive, and the article containing the General Provisions, in the order here stated.

Your committee would beg leave to call the particular attention of the Convention to the concluding provision of the 9th section of the Bill of Rights; and would suggest to the Convention, the propriety of striking out that part of the section which occurs after the words "*habeas corpus*," and which makes the writ returnable to the county where the offence is committed. Your committee are well satisfied that if this portion of the section is retained, it will operate frequently to the very great injury of the party charged with crime, or to the interest of the judicial district in which the crime shall have been committed.

All of which is respectfully submitted.

W. B. OCHILTREE,
Chairman.

Mr. Bache offered the following resolution, which was laid on the table one day, for consideration.

Resolved, That it shall be the duty of the Governor to nominate, and with the advice and consent of two thirds of the Senate, at the first session of the Legislature to appoint a board consisting of three commissioners, whose duty it shall be to ascertain, classify and liquidate the public debt, according to the principles of equity—under such regulations as the Legislature may prescribe.

On motion of Mr. Cazneau, the report of the revising committee was taken up, and the grammatical corrections of said committee, to the articles on the Bill of Rights, the Judiciary and the Legislative Departments, were adopted.

The following amendment proposed by the same committee, to the 9th section of the Bill of Rights, viz: to strike out "returnable where the offence is committed," was taken up, and after some debate, Mr. Young moved the previous question.

The question—shall the main question be now taken? was put and carried.

The question being the adoption of the amendment proposed by the revising committee, the ayes and noes being called thereon, stood as follows:

Ayes—Messrs President, Armstrong of J., Brown, Caldwell, Darnell, Evans, [illegible], Forbes, Hemphill, Henderson, Howard, Irion, Lewis, Lusk, [illegible], McGowan, McNeil, Navarro, Power, R[illegible], Runnels, Scott, Tarrant, Ochiltree and White—26

Noes—Messrs Anderson, Armstrong of R., Bagby, Baylor, Bache, B[illegible], Cazneau, Clark, Cunningham, Cuney, Davis, Gage, Hicks, Hogg, Horton, Holland, Hunter, Jewett, Jones, Latimer of L, Latimer of R R, Love, Lumpkin, Miller, Smyth, Standefer, Van Zandt, Wright and Young—30.

So two thirds not voting for the amendment, it was lost.

Mr Mayfield gave notice that at the proper time, he would move a reconsideration of the votes engrossing and adopting the 9th section of the Bill of Rights.

The following additional section to the Bill of Rights, reported by the committee of revision, was then adopted:

"Art 2d The powers of the Government of the State of Texas shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another, and those which are judicial, to another: and no person, or collection of persons, being of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

Mr. Cazneau moved to lay the Bill of Rights on the table.
Lost.

Mr. Rusk moved to amend the Bill of Rights, 5th section, by inserting after "*ex post facto* law," the words "retroactive law;" which was adopted by a vote of two-thirds.

The Bill of Rights was then read a third time, and passed.
The article on the Executive Department was read a third time.

Mr. Rusk offered the following as an additional section, to come in as the 19th section.

"The Governor, by and with the advice and consent of two thirds of the Senate, shall appoint a convenient number of notaries public, not exceeding six for each county, who, in addition to such duties as prescribed by law, shall discharge such other duties as the legislature shall from time to time prescribe."

Which was adopted by a vote of two thirds.

The Education article was then passed.

The article in relation to the Judicial Department, was read a third time.

Mr Scott moved to strike out the 18th section of the Judiciary Department.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Bagby, Brown, Cunningham, Hemphill, Jones, Lipscomb, Scott and Smyth—8.

Noes—Messrs. President, Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brashear, Cazneau, Clark, Caney, Darnell, Davis, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Hunter, Irion, Jewett, Latimer of R. R., Lewis, Love, Lusk, Lumpkin, Mayfield, McGowan, McNeil, Navarro, Power, Rains, Runnels, Standefer, Ochiltree, Van Zandt, White, Wright and Young—40.

So the motion was lost.

The article on the Judicial Department was then passed.

Mr Davis asked leave of absence for the remainder of the session, after to-day, which was granted.

The committee on the State of the Nation made the following report:

To the Hon. THOS J. RUSK,
President of the Convention:

The committee on the State of the Nation, to whom was referred the difficult and complicated task of providing for the abolition of the present Government, and to adopt and establish in lieu thereof, a government for the State of Texas, as a separate and independent State of the American confederacy, deem it necessary until this change, and until consummated by being accepted, as a State, in the American Union, that a Government suitable to our condition, acknowledged and approved by this Convention, and by the people, should continue and be preserved, to exercise full and ample powers—to do all and everything which is now done, under the Constitution and laws of the Republic of Texas; and also, everything which is contemplated to be done and performed by the Governor and Legislature, under the powers granted therein, by the Constitution now formed, and submitted for adoption by the people. For that purpose, your committee submit the following resolutions for your consideration.

Respectfully, yours, &c.,

JOHN CALDWELL, Chairman.

AN ORDINANCE

To provide for submitting directly to the people of Texas, the proposition for the annexation of Texas to the United States of America, as contained in a joint resolution passed by the Congress of the said United States of America, and approved by the President thereof, on the day of 1845; and for submitting to the said people of Texas, for their approval or rejection, the Constitution made and adopted by their delegates in Convention assembled, in view of said annexation; and also to provide for the abolition of the present form of Government of the Republic of Texas, and to adopt and establish a Constitution and Government for the State of Texas, as a separate and independent State of the American confederacy.

1st. Be it ordained by the people of Texas, and it is hereby ordained by their delegates in Convention assembled, That polls shall be opened at the several election precincts, as now established in the Republic of Texas, on the day of next; at which place all the qualified voters of said Republic shall have the right to assemble and vote directly upon the proposition of annexation, as offered in the joint resolution passed by the Congress of the United States of America, and approved by the President thereof, on the day of 1845; and also upon the adoption or rejection of the Constitution made and adopted by their delegates in Convention assembled, for the formation of a state government, in accordance with said proposition.

Sec. 2. Be it further ordained by the authority aforesaid, That, at the elections to be held at each of said polls, the managers of the same shall cause to be prepared three tabular lists, each of which shall contain five columns; the first to be headed—"Names of Voters;" the second—"For Annexation;" the third—"Against Annexation;" the fourth—"Adoption of the Constitution;" and the fifth—"Rejection of the Constitution;" and as each person presents himself to vote, his name shall be written in the first column, on each of said lists; and he shall there pronounce *viva voce*, his vote upon the question presented—if in favor of annexation, by saying "Annexation;" if opposed to it, "No Annexation;" and if in favor of the adoption of the Constitution, by saying "Adopt;" and if opposed, "Reject;"—each of which said votes shall be marked on a line with the name of the voter, in its appropriate column; and the said election shall be conducted, in all other respects, in conformity with the law of the Republic now in force, regulating elections.

Sd. Be it further ordained by the authority aforesaid, That at the same time and places above specified for holding said elections, polls shall also be opened under the superintendence of the same managers, judges and other officers, for the election of Governor and Lieut. Governor for the State of Texas, and for Senators and Representatives to the Legislature of said State, in accordance with the apportionment of representation as established by said Constitution; but the votes for said Governor and Lieut Governor, Senators and Representatives to the Legislature shall be by ballot.

4th. Be it further ordained by the authority aforesaid, That it shall be the duty of the managers of said elections to forward within two days after the same shall have been closed, the said lists to the Chief Justice of the county in which the same were held, whose duty it shall be to deposite one of said lists in the clerk's office of the county court of said county, to forward another one of said lists to the Secretary of State of the Republic, and the remaining one of said lists to the Speaker of the House of Representatives of the Legislature of said State of Texas, the said lists so forwarded to be properly enveloped and marked on the outside "Election Returns of   county"

5th. Be it further ordained by the authority aforesaid, That the President of the Republic be and he is hereby, requested to issue his proclamation ordering the said elections, and the chief justices of the several counties in this Republic, or their associates, are hereby required to cause said elections to be holden in their respective counties at the time and manner provided for by this ordinance; and should any chief justice or his associates fail to cause said elections to be holden at the time and places herein provided, the people of the precinct where such failure exists are hereby authorized to choose managers, judges and other officers to conduct said elections.

6th. Be it further ordained by the authority aforesaid, That if the people of Texas elect to accept the aforesaid proposition of annexation, and approve and adopt the Constitution for the State of Texas submitted to them by their said delegates in Convention, which shall be ascertained from the returns made to the Secretary of State, whose duty it shall be to publish the result of said polls, then the first Legislature of said State shall convene at the seat of government established under this Constitution, on the   day of   next, and proceed immediately to organize under said Constitution; and that after they shall have organized, the Speaker of the House of Representatives shall, in the presence of both branches thereof, open the returns of said election, count and compare the votes, and declare the names of the persons who shall have been chosen as Governor and Lieut Governor, which said persons shall forthwith take the oaths of office prescribed by the Constitution, and enter upon the discharge of their respective duties.

7th. Be it further ordained by the authority aforesaid, That it shall be the duty of the President of Texas, immediately after the inauguration of the Governor, and his entrance upon his duties, to deliver to him the possession of all records, public documents, archives and public property or money of every description whatsoever, under the control of the Executive branch of the Government of the Republic of Texas, who shall dispose of the same in such manner as the Legislature may direct.

8th Be it further ordained by the authority aforesaid, That the Legislature shall proceed forthwith, after its organization, to pass all such laws and resolutions as may be necessary to the complete and perfect organization of the government of the state, and as may not have been provided in the Constitution and this ordinance The said Legislature shall, as soon as it may be proper, proceed to elect senators and provide for the election of representatives to represent the State in the Congress of the United States; it shall also adopt such measures as may be required to cede to the United States, at the proper time, all public edifices, fortifications, barracks, ports, harbors, navy and navy yards, docks, magazines, arms and armaments, and all other property and means as pertains to the public defence, now belonging to the Republic of Texas; and to make the necessary preparations for transferring to the said United States all custom houses and other places for the collection of impost duties and other foreign revenues.

9th Be it further ordained by the authority aforesaid, That from and after the organization of the government of the State of Texas, as provided for and contemplated by the Constitution of of the State of Texas, and this ordinance, all revenues arising either from the tonnage of vessels or upon the importation of goods, wares and merchandize from foreign ports or places, which up to that period were collected by the government of the Republic of Texas, shall be collected by and for said state of Texas, and for the exclusive benefit of the government and people thereof, and shall be returned to and disbursed by the Treasurer of said State of Texas, until the measure of annexation shall have been finally consummated and completed by the acceptance of the Constitution of said State by the Congress of the United States, and the admission of said State of Texas into the Union as a separate and independent state of the confederacy, and until the custom houses are taken possession of by the officers appointed to collect the revenue according to the laws of the United States; and all laws now of force in the Republic of Texas, providing for the collection of imposts and tonnage duties shall remain in force and be observed in said state, for the time aforesaid, except such laws as impose duties upon goods, wares and merchandize imported from ports or places within the said United States of America, and such as impose tonnage duties upon the ships and vessels of the said United States And it is hereby declared that from and after the organization of the state government of Texas, and until the said state shall be fully admitted into the Union as one of the states of the American confederacy, there shall be no duties collected at the custom houses of said State upon the tonnage of the ships and vessels of the United States, or upon goods, wares and merchandize imported and brought into said State of Texas from any port or place within the said United States or the territories thereof.

10th Be it further ordained by the authority aforesaid, That to prevent inconvenience or embarrassment from proceeding to the people of Texas from the change of the government which is about to be effected, by the abolition of the present government of the Republic of Texas, and the establishment of a State government preparatory to the incorporation of said State of Texas into the American Union, as one of the states of the confederacy it is hereby declared—1st. That all officers civil and military who shall be holding and exercising offices within the said Republic of Texas, at the time of the change and organization of the state government, except the offices of President, Vice President, President's Cabinet and Foreign Ministers, Chargés and Foreign Agents, (all of which are hereby declared to be abolished from that time,) shall remain in office, and continue to discharge and perform the duties of their respective offices, provided the same be not abolished by, or repugnant to, the Constitution of the State, until they shall be superseded by the Legislature of the State or the Governor thereof, or until said offices be abolished by law.

11th. Be it further ordained by the authority aforesaid, That the Governor and Legislature of the State shall as soon as practicable, after the change of the government, proceed to organize the judicial system of the State in accordance with the provisions of the Constitution by appointment of judges of the supreme court, the establishment of judicial districts and the appointment of the judges thereof, and such other officers as are provided for by this Constitution.

Which was laid on the table, to come up among the orders of the day.

On motion the Convention adjourned until 3 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Ochiltree, the preamble of the Constitution was taken up, and, on motion of Mr. Hemphill, it was referred to the revising committee.

On motion of Mr. Darnell, the report of the select committee on the rights of married women, was taken up.

The substitute reported by the select committee for the 18th section, being before the Convention, Mr. Horton moved to amend the substitute by inserting "laws shall be passed providing for the registration of the wife's property."

Which was adopted.

The ayes and noes being called on the adoption of the substitute as amended, stood thus:

Ayes—Messrs. President, Anderson, Bache, Bagby, Brown, Caldwell, Clark, Cuney, Davis, Darnell, Evans, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hunter, Jewett, Latimer of L, Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Smyth, Tarrant, Standefer, Ochiltree, Van Zandt and Young—37.

Noes—Messrs. Armstrong of J, Armstrong of R, Baylor, Cunningham, Everts, Hicks, Irion, Latimer of R. R., M'Gowan, McNeill, Scott and Wright—13.

So the substitute of the committee was adopted.

Mr. M'Neill offered the following as an amendment to the substitute just adopted:

Provided that the property in possession of either husband or wife, or an agent of either, shall be subject to the debts contracted on the faith of said property.

Which, on motion of Mr. Young, was laid on the table.

Mr. Brown offered the following as a substitute for the substitute of the committee:

All lands and slaves owned by the wife before coverture, and all subsequently acquired by gift, devise or descent, together with the increase and profits of the same, shall be the separate property of the wife.

Which was rejected.

Mr. Armstrong of J, moved to insert in substitute of committee, after "separate" the words "and the community."

Which was lost.

The question was then on the adoption of the substitute as a section.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Bache, Bagby, Brown, Clark, Cuney, Darnell, Davis, Evans, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hunter, Holland, Jewett, Jones, Lewis, Love, Lusk, Lipscomb, Miller, Navarro, Power, Rains, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—35.

Noes—Messrs Armstrong of J., Armstrong of R., Caldwell, Cunningham, Everts, Forbes, Hicks, Latimer of L., Latimer of R. R., Lumpkin, McGowan, McNeil, Scott and Wright—16.

So the substitute was adopted as a section.

Mr Latimer of R. R. moved to take up the 21st section of General Provisions of the Constitution.

Carried.

Mr. Mayfield's amendment being before the Convention.

On motion of Mr. Van Zandt, a call of the Convention was ordered.

On motion of Mr. Young, the call was suspended.

On motion, Messrs. Van Zandt, Forbes and Davis were appointed to wait upon such members as were sick, and receive their votes on the amendment to the 21st section.

On motion of Mr. Anderson, a call of the Convention was ordered.

Mr Lusk moved a suspension of the rule.

Lost.

Mr. Young moved to suspend the call, and called for the ayes and noes upon it, which resulted as follows:

Ayes—Messrs. Anderson, Brashear, Bagby, Brown, Cuney, Hunter, Latimer of R. R., Latimer of L., Love, Miller, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree and Young—17.

Noes—Messrs. President, Armstrong of R., Baylor, Bache, Caldwell, Cazneau, Clark, Cunningham, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hicks, Hogg, Horton, Hunter, Holland, Irion, Jewett, Jones, Lewis, Lumpkin, Lusk, McGowan, McNeil, Navarro, Power, Rains, White and Wright—31.

So the Convention refused to suspend the call.

Mr. Everts moved to suspend the call.

Which was lost, ten members voting against it.

The committee which was appointed to wait upon the absent members having returned,

On motion of Mr. Horton, the call was suspended.

The question now recurred on Mr. Mayfield's amendment to the 21st section of the General Provisions.

Mr. Mayfield said: Before the vote is taken, Mr. President, if I have the leave of the Convention, I desire to submit a few remarks in addition

to those I have made upon this subject, elicited by the course the debate has taken. And, first, I will state that I shall be gratified if gentlemen will join me in another measure which I will offer to the consideration of the Convention, by which we can reclaim to the country from forty-two to fifty five millions of acres of land, which are at present held up and at the disposition of the fraudulent land operators of this country. We can do this without doing injustice to any, without violating any correct principle, without infringing in the least degree the constitutional rights of every man, or acting in opposition at all to the Constitution of the United States, or that of Texas. And at the same time I think we shall be keeping ourselves within the line of our duty, and not in the least degree jeopardizing the adoption of our Constitution by the government and people of the United States: and that by doing this, we shall relieve the people of Texas, who are bound down by a heavy debt, which they are under the most serious obligations to discharge, and extend justice to those who are truly meritorious.

I have occupied, Mr. President, the time of the Convention on two occasions upon the present question; and I return my most hearty and cordial thanks for the attention with which I have been favored. It is one of vital importance; one upon which many entertain serious and perhaps conscientious doubts with regard to the mode of proceeding which should be adopted, to guard and protect the safety and interest of the State on the one side, and at the same time to do justice to individual rights. Now, sir, for my own part I do not seek, and I am satisfied that no gentleman who joins with me in the opinions I entertain upon this subject, desires to violate or infringe in the least degree, any settled principle of international law or regulation of civilized society. And, sir, I flatter myself that there are many upon this floor who do not feel that when they entertain and express these opinions, they are in that degree becoming as uncivilized as the common savage, or the Comanche, who roams over your prairies, or may disturb the quiet or repose of your frontier settlements. I flatter myself that those entertaining the opinions I do, and who will express them by the vote they give here upon this occasion, do not conceive that they are classing themselves with a band of robbers. Why, sir, are honorable gentlemen entitled to indulge in denouncing all who differ from them upon this subject? Is it because they have expelled the savage from these halls? Is it because that class whom they seek to protect have expelled the savage from the line of the settlements? Is it because these free communities, so much eulogized by one of the honorable gentlemen, have given peace and protection to your frontier? No, sir; others have done it; the strong arm of the freeman of your country has done it; it has been the work of those who seek to maintain the institutions of the land as they exist; of men, sir, who seek not only to give Texas existence, but at the same time to give her a character above reproach. These are the men that have given us the privilege of deliberating here and discussing these questions, where in former days the rude savage had his resting place. And are those who entertain the opinions I do, and propose to reclaim this ground from the gripe of the greedy speculator, to be thus stigmatized as worse and more brutal robbers than the wild Comanche? Sir, what are the results to be attained by pursuing a different course? We are told by an honorable gentleman that the establishment of vast free labor communities on our western borders will be the consequence of carrying out these contracts. He did not say it, perhaps, but that is the inference from his language. He told us however, that he would rather see one man of such a class occupying the soil than perhaps fifty or a hundred greedy land speculators. Sir, by the operation of this system what do these gentlemen build up? Do they build up an untrammelled class of free and independent population? No, sir. They create little principalities or dukedoms under the control of princes, who, like one already among us, wear sprigs of liveoak or cock feathers in their hats, as an indication of their superiority. This population has no intercourse with the great mass of the people. Whom does this system benefit? Does it inure to the maintenance of the institutions of the land or to the general benefit of the country? No, sir. When these emigrants are settled, the petty duke or prince is their master. What farther result does it lead to, sir? I am as little of an alarmist as other men; but let me ask you what will be the practical result of this system? In time Texas is to be divided into States with equal and independent powers; and the consequences will be that the establishment of free States where slave labor is not to be employed, will be demanded at your hands. Now I will boldly avow upon this floor, not as the representative of the county of Fayette alone, but of the people at large, that I am willing to make a declaration upon this occasion, that no State shall be established, unless it carries with it the institution of slavery, and in doing so I believe we shall express the sentiment of every man, woman and child within the just limits of Texas. Will you then, by a secret and underhanded policy, establish these little petty dukedoms and principalities, which, in after time, may become free States upon your borders, and within the latitude and limits of a country exclusively appropriated as well by policy as by nature and character of the soil and productions to the employment of slave labor? Again, I ask, to whom do the benefits of this system inure? Not, Mr President, to the representative of the poor soldier who died at the Alamo, or fell upon the plains of Goliad, or was made a sacrifice with Fannin; for none of these rank or class themselves with the speculators of your land. They are only asking that poor bounty for the services of the soldier and the patriot which the universal sentiment of mankind has awarded them. These claims are yet, in many instances, in the hands of the poor representatives of such people; and they but ask of their country an equal share in the distribution of these lands which their kindred fought for. But the true speculator is he who will come with this great body and mass of free laborers, who, instead of making them freemen when he presents them upon your soil, will in the first instance exact a contract from them before they leave the shores of Europe, and upon their arrival in this country, will rob them of the portion to which they are justly entitled. If this population is to be introduced into our country, sir, I want them to come as freemen, and not as the serfs of any petty prince, or duke, or company. I want them to come as freemen, willing to identify themselves with the institutions of the land, to come of their own free will and accord, with a proper understanding of our institutions before they leave their homes.

I say therefore, Mr President, inasmuch as the whole question has been thus presented, that upon this occasion we cannot do better than boldly to assume the responsibility imposed upon us, and devote ourselves to the consideration of the subject in such a manner that we shall do injustice to none, but at the same time be just to ourselves and establish a principle which will clearly and indubitably maintain the character and interest of our country, its honesty and prosperity, and manifest to the world a disposition to economize our means for the payment of the public debt, and the support and maintenance of the government.

I am sorry to be constrained to allude so often to the remarks of the honorable gentleman from Bexar; but, sir, we have been so often lectured by him with regard to the performance of our duties, and his strictures have been so severe and caustic in their character, and apparently in some degree aimed at myself, that I cannot refrain from noticing them upon this occasion. His philosophy, sir, it seems to me, is wholly inapplicable to the case; and in truth, so far as his argument of yesterday is concerned, he reminds me of the Scotchman who was called upon to define metaphysics, and said, "if you see one man talking to another, and the man talked to does not understand what the other is talking about, and he that is talking dinna ken what he is talking about himself, that is metaphysics." Now the gentleman's philosophical and metaphysical conclusions seemed in some degree of that character yesterday; for he entered into abstractions, which, I flatter myself, so far as this question is concerned, no man in this Convention understands as applicable. His genius and imagination, however, may have induced him to believe them applicable to the case under consideration.

I hold that this question is one exclusively of policy; or rather that policy independent of other considerations, does direct that we should act upon this question without fear. When we come to look at the true acts of the case, we find that some twenty four millions of the public domain of Texas are occupied by the location and survey of certificates pronounced fraudulent by the tribunals of the country established by law. And when we come to estimate the area of the land to be squandered away among these various contracts, we find that it amounts to about as much more. Now, sir, the question presents itself to the consideration of the people of Texas, whether upon this occasion we should not adopt some act whereby these lands might be reclaimed to the country to support her credit and maintain her institutions; whether the people of Texas by their Delegates in Convention assembled, will wrest them from the greedy hands of these speculators, and appropriate means thus afforded to the honest payment of the national debt, contributing something to the support of common schools and the purposes of education in the land. The true issue is not one between Sam Houston and any body else; it is one of justice and right between the country and a set of harpies who have preyed upon it from the time of the organization of our government down to the present period.

The ayes and noes were called upon the amendment, and stood as follows:

Ayes—Messrs. Armstrong of R.. Baylor, Bagby, Brown, Burroughs, Caldwell, Clark, Davis, Evans, Gage, Holland, Horton, Hunter, Jewett, Jones, Latimer of L., Latimer of R. R., Love, Lumpkin, Mayfield, McNeil, Moore, Ochiltree, Parker, Runnels, Standefer, Tarrant, Van Zandt, White, Wood, Wright and Young—32.

Noes—Messrs. President, Anderson, Bache, Brashear, Cazneau, Cuney, Darnell, Everts, Hemphill, Hicks, Hogg, Howard, Irion, Lewis, Lusk, Lipscomb, Miller, McGowan, Navarro, Power, Rains, Scott and Smyth—23.

So the amendment was adopted.

Mr. Young moved the adoption of the section.

Mr. *Rusk* said: I look upon this, sir, as a most important question. To my mind, though I may be mistaken, it presents the direct issue of the success of the cause of annexation before the Congress of the United States, or its failure. It is, sir, an important matter, when we take into consideration the gigantic and stupendous speculations embraced by these contracts. That they are unconstitutional, I firmly believe. That they were obtained by fraud, or are fraudulent in their nature, I firmly believe. But the Convention in this article treats them as contracts, and if they are recognized as contracts, to set them aside would be to violate, to my mind, a plain and palpable provision of the Constitution of the U. States. I will not detain the Convention by going into an argument upon the constitutionality or fraudulency of these contracts. I must, however, be permitted to say, that gentlemen who have argued the question of fraud have not argued it according to the principles of law. It is not necessary for the President to be corrupt to perpetrate a fraud; it is not necessary for the Legislature to be bribed. The law lays it down in plain language that two individuals may make a fair and honest contract, which is still a fraud. I make no charge against any officer of the government. There is one thing, however, that I will say: the history of these transactions shows that over thirty millions of acres of the public lands are chained up by these very contracts from the location of the early settlers of the country, of the soldier who served us in the darkest hour of peril, and to the heirs of those who have fallen battling for our rights. Yes, sir, and they contemplate that these very contractors may thereby amass in their own hands upwards of seven millions of acres of the public domain. But this is a digression. I believe when we get these contracts before the judicial tribunals, they will declare them unconstitutional, that they will declare them a fraud upon those persons having the highest right to locate the public domain.—But while I believe them fraudulent and unconstitutional, I am called upon here to perform a solemn act; I am called upon here to discharge a duty, in the performance of which I owe it to myself and my country to act with caution; to the cause of republican governments to act with caution; to my posterity to act with caution, and to let no immediate circumstances influence me to come to conclusions and pursue a course which in my opinion may and will end in the defeat of annexation. An argument has been used, which I regretted to hear, because, men when they are anxious to do a particular thing are easily persuaded; when they see such stupendous frauds as these, in their anxiety to defeat them, they will act upon principles which would not otherwise guide them.—It has been argued, unfortunately as I think, that the Congress of the U. States has no right to inquire into the acts of this Convention in the fundamental law of this land, that we are not in the U States, and this is an act preparatory to our going in. But, sir, there is a fallacy in this argument. Is this act made with reference to Texas acting as a separate and independent government? No, sir; but with reference to Texas considered as a State in the union. It it as much an act of the state if our Constitution is afterwards accepted, as any act passed by the Legislature ten years hence. I regret extremely that I cannot, upon this subject, go with gentlemen with whom I have often stood shoulder to shoulder. If I could do so without a violation of the Constitution of the United States, and without endangering the question of annexation, no man would go farther. The Constitution, sir, which we shall here form will be a State law, not the fundamental law of a separate government but the fundamental law of a State of the U States, and subject to the Constitution of the United States—and that constitution declares emphatically that no State shall pass any law impairing the obligation of a contract. Then, sir, if we adopt the 21st section, I shall feel from the moment it is adopted, that the fate of our Constitution in the U. States is sealed. And I am not alone in my views of the subject. A gentleman, learned in the law, a gentleman of age and experience, who sits near me, one who is not as easily moved by passion and feeling as I might be, after having reflected well upon the subject, entertains the opinion that if this clause is adopted, our Constitution will be inevitably rejected. Let us pause, then, sir, and reflect. What will be the consequences? The people of this country are already highly excited upon the question of annexation—the hope of this event animates the bosoms of them all, from the Sabine to the Rio Grande. Every thing is sought for with avidity which has the most remote bearing upon the subject. I, sir, in common with the people, believe that our hopes of futurity depend upon the consummation of this measure. Whether they do or not, the people believe it. The affairs of the country would be thrown into confusion, and turmoil and anarchy would follow the rejection of of our Constitution by the U States. But, sir, if we are true to ourselves, we need entertain no fears.

I have indulged further in my remarks than I intended when I rose; having risen for the purpose of moving that the section, together with the amendments proposed, be referred to a special committee.

Mr Love offered the following as a substitute for the section as amended:

The Legislature shall not have power to extend the time, alter, change or modify the conditions in favor of any contractor who may have heretofore made any contract for the introduction of colonists into Texas, under any law now or heretofore in force.

And in order to test the constitutionality, legality or validity of any such contract, the Attorney General, as soon as practicable after the organization of the state government, shall institute legal proceedings against the several contractors to annul and set aside the aforesaid contracts, as well on account of their unconstitutionality, illegality and for failure to comply with the terms and conditions of the same.

And after judicial investigation, should it appear that any or all of said contracts are unconstitutional, illegal or that the terms shall not have been complied with by the contractors, the court is directed to declare said contracts void and of no effect.

It is, however, declared that all colonists introduced before the adoption of this constitution, by the people, shall be, and hereby guaranteed the right and possession of any lands he may have acquired as a colonist under any agreement or contract made with a contractor. And it is declared that until the investigation can be had, as authorized by this constitution, the right of any contractor to introduce any colonist under any contract shall be, and the same is hereby suspended.

Mr. Brown moved a call of the Convention.

Mr. Van Zandt moved to adjourn until 8 o'clock to-morrow morning.

Lost.

A call of the Convention was ordered.

Mr. Tarrant moved to adjourn until half past 8 o'clock to morrow.
Mr. Mayfield moved to adjourn until 9 o'clock to-morrow.
Lost.

On motion of Mr. Wright, the Convention adjourned until 8 o'clock to morrow morning.

Wednesday Morning, Aug. 20, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Ochiltree, chairman of the revising committee, made the following report:

Committee Room, August 20, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The committee of supervision have had the preamble and the Legislative article of the Constitution under consideration and have directed me to report the following substitute for the preamble and amendments to the legislative article.

Very respectfully,
Your obedient servant,
W. B. OCHILTREE, Chairman.

Which was laid on the table, to come up among the orders of the day.

Mr. Lewis moved to take up the report of the revising committee.—Carried.

The preamble offered by the committee as a substitute for the preamble heretofore proposed, was first in order, and is as follows:

PREAMBLE.

"We, the people of the Republic of Texas, acknowledging with gratitude the grace and benificence of GOD, in permitting us to make a choice of our form of government, do in accordance with the provisions of the joint resolution for the annexation of Texas to the United States, approved March 1st, 1845, ordain and establish this Constitution."

Which was adopted as a substitute for the original.

Mr. Lusk moved to strike out "Republic." Lost, and the substitute as a preamble, was then adopted.

On motion of Mr. Ochiltree, the rule was suspended, and the preamble read a third time and passed.

The correction of all the grammatical errors in the Legislative Department, proposed by the committee of revision, was [illegible].

Mr. Van Zandt moved to strike out the word [illegible] in the 23d section. Carried.

On motion of Mr. Anderson, the article on the Legislative Department was taken up, to be read section by section.

Mr. Howard offered the following as an addition to the first section:

"Nothing in this section shall be so construed as to [illegible] any person, entitled to vote by the existing laws at the time of the adoption of this Constitution."

Which was rejected—two-thirds being required to vote for its adoption.

Mr. Darnell moved to amend the 12th section by [illegible] the word "Speaker," the words [illegible] "President pro tem," the words [illegible] Lost.

Mr. Hemphill moved to amend the 14th section, by adding [illegible] cept in such cases as may [illegible]

Upon which the yeas and nays [illegible]

Ayes—Messrs. [illegible] Evans, [illegible] L[illegible] [illegible] and W[illegible]—[illegible].

Nays—[illegible]

[illegible] Van Z[illegible]

[illegible]

Mr. H[illegible]

[illegible]

[illegible]

[illegible]

Mr. Jones moved to strike out the last clause of the 23d section "nor shall the members be capable, &c. Lost.

Mr. Armstrong of J., offered the following as an addition to the 23d section:

"The President, for the time being, of the Senate, and Speaker of the House of Representatives, shall be elected from their respective bodies."
Which was adopted by a vote of two thirds.

Mr Forbes moved to amend, by striking out in the 29th section, the word "four" where it occurs, and insert "three;" strike out "three" where it occurs and insert "two;" and strike out the word "two" where it occurs, and insert "one."

Mr. Bagby moved to amend the amendment, by striking out the word "one",—which, after some discussion, was withdrawn.

The question on Mr. Forbes' amendment was taken and lost.

Mr. Van Zandt moved to amend the 34th section, by striking out after the words "seat of government," the words "until the year;" also, to strike out "unless" and insert "until;" and, also, strike out the word "sooner," so as to read "then the same shall be the permanent seat of government until the State shall be divided."

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Brown, Clark, Cazneau, Cunningham, Evans, Everts, Gage, Hemphill, Hicks, Horton, Howard, Irion, Jewett, Jones, Latimer of R. R., Mayfield, McGowan, McNeill, Miller, Navarro, Runnels, Smyth, Tarrant, Van Zandt, White and Wright—31.

Noes—Messrs. Bagby, Brashear, Burroughs, Caldwell, Coney, Darnell, Forbes, Henderson, Hogg, Holland, Hunter, Latimer of L., Lewis, Love, Lumpkin, Lusk, Lipscomb, Parker, Rains, Scott, Standefer and Young—24.

Two thirds not having voted for the amendment, it was lost.

Mr. Cazneau moved to fill the blank in the 34th section, with 1860.

Mr. Young moved to fill the blank with 1870.

Mr. Hemphill moved to fill the blank with 1900. Lost.

Mr. Brown moved to fill the blank with 1876. Lost.

Mr. Ochiltree moved to fill the blank with the words "till altered by a Convention of the people."

The question was taken on Mr. Young's motion to fill the blank with 1870, and carried.

Mr. Forbes moved to strike out the words "unless sooner divided," in 34th section.

Mr. Bagby moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the passage of the article on the Legislative Department, was taken and carried.

On motion, the orders of the day were taken up.

Mr. Love's substitute for Mr Rusk's substitute, for the 21st section of the General Provisions, before the Convention—

Mr Mayfield gave notice in writing, that he would move a reconsideration of the vote adopting the 34th section of the article on the Legislative Department, with a view of offering an amendment thereto.

Mr. *Evans* said: I meant yesterday, Mr. President, to have addressed the House, but was too unwell to do so—indeed, I am rather too unwell now, to speak as I could wish. There are a great many topics coming up in connexion with the subject which ought to be noticed. This question has a very important bearing upon the interests of Texas; I had trusted the Convention would give to it that mature consideration and full discussion its magnitude seemed to demand.

The people have called us to the performance of great and responsible duties. They have clothed us with their full authority—all the political power which the Republic of Texas possesses conferred upon this Convention—the people reserving to themselves the right only of passing upon our acts. This Convention has all the power over the political rights of the people. Whatever we do, if assented to by them, no power on earth can object to.

We claim as yet to be an independent sovereignty, and that this Convention represents that sovereignty. One of the most distinguishing attributes of independence is full and perfect jurisdiction over each member in the community, and over every item of property constituting their property.

My friend from Bexar, [Mr. Howard] I had thought, established this doctrine in his argument on the contested election from Nacogdoches. He then enforced, in a strain of pure and lofty eloquence, the rights of freemen to pull down and build up governments at pleasure—that we, as Deputies in Convention, were legislating in the very highest capacity of legislators—framing an organic law to last unrepealed for years; a basis on which all our rights may safely repose for ages.

He now, with other learned gentlemen, contends that the people in Conventions assembled, are limited in their powers. Neither he nor they have adduced any authorities for these doctrines. I know Kent's

Commentaries have been read; an opinion of the Supreme Court of the United States has been referred to; neither of which bear them out.

I [illegible] that they have introduced no authorities. We are here on the extreme frontier, far removed from libraries. [illegible] it is to be regretted that we have no books to aid us in our deliberations. Called suddenly together, with no previous preparation, [illegible] the shortest time allotted for the consummation of our work, it is impossible to investigate thoroughly questions which depend upon the authority of history, of law and the principles of government.

I have just laid my hand upon Vattel's Law of Nations, and selected a few sections to read. Not having had time to arrange them, I must pray the attention of Deputies to catch points as I read. Permit me first to state, that, in my opinion, no respectable political writer or jurist ever advanced the doctrine, that a people when in Convention were under any law, other than the great law of nature and of nations

On page 51 —Nations being free and independent of each other in the same manner as men are naturally free and independent, the second general law of their society is, that each nation ought to be left in the peaceable enjoyment of that liberty it has derived from nature: from this liberty and independence, it follows that every nation is to judge of what its conscience demands, of what it can or cannot do, of what is proper or improper to be done. In all cases, then, when a nation has the liberty of judging what its duty requires, another cannot oblige it to act in such a manner.

Again, on page 175 —Everything in political society ought to *tend* to the good of the country; and if even the citizens' persons are subject to this rule, their fortunes cannot be exempt. The State cannot subsist, or administer public affairs in the most advantageous manner, if it has not the power of disposing on all occasions of all kinds of goods subject to its authority, it has the right of disposing for public policy of the eminent domain.

And, on page 64 —We may conclude from what has been said that if there arise any dispute in a state, on the fundamental laws, the public administration, or the prerogatives of the different powers of which it is composed, it is the business of the nation alone to judge and determine them in conformity to its political constitution: *in short*, all these affairs being solely a nation's concern, no foreign power has the right to interfere in them, *nor* ought to do so otherwise than by its good offices

From these principles it follows that we can do anything which our conscience and our duty demands, without consulting the wishes of any government or people. We can resume all grants, dissolve all contracts, and no nation can rightfully complain. In short, we can do as we may please—destroy all rights.

If we violate the law of nations, by trampling down the rights of citizens of other governments, what is the remedy? Those governments may make it a cause of war; and war is the only remedy.

If we violate the law of nature, by destroying the rights of our own citizens, or foreigners standing as these contractors do, in the attitude of citizens, I affirm that there is no remedy, not even by war.

There is but one tribunal to which a people is held accountable, for violating any of the principles of natural justice: that of Him, by whom all the actions of men are weighed.

Texas herself is the sole sovereign judge of what her duty or her conscience requires, and no power but the power of the most high can call in question her judgment.

Again, on page 50—The universal society of the human race, being under an institution of nature, that is the necessary consequence of the nature of man, all men in whatever station they are placed, are obliged to cultivate its dictates They cannot dispense with them by any convention or private association. Where they unite in civil society, in order to form a separate state or nation, they may justly enter into any particular engagements with those with whom they associate themselves, but they are still under the obligation of performing their duty to the rest of the human species

Yes; we are under obligations to perform all our duties to foreigners—to other nations—to the rest of the human species: but with regard to ourselves, we are under obligations to our own citizens to perform all our duties—to cultivate the dictates of nature—but responsible to no human tribunal if we do not.

The United States cannot complain of our action upon this subject; because the very thing we propose to do; she actually did, or caused Spain to do, in the treaty for the cession of Florida.

During the pending of that negotiation Spain made large grants of land to certain individuals: in the treaty drawn up by Mr. John Quincy Adams, and Louis D'Onis, it was stipulated that Spain should annul these grants.

I will read a part of the 8th section of the treaty as found in the land laws of the United States, in special reply to my distinguished friend from Nacogdoches, [Gen Rusk]:

> All grants made since 24th January, 1818, when the first proposal on the part of her Catholic Majesty for the cession of Florida was made, are hereby declared and agreed to be null and void.

The United States, by solemn treaty, demanded of Spain to annul certain grants Now, I ask, was this in violation of the law of nature and of nations? Was it in violation of the Constitution of the United States? When Florida became a part of the United States, the citizens residing upon her soil became *ipso facto* citizens of the United States The treaty expressly annuls a large class of grants, depriving many citizens, holding under them, of all claims to their lands. The grantees, for ought I know, may have looked to Spain for compensation, but then the grants were gone and gone forever.

I believe we could not do the United States a more acceptable service, than to abrogate the contracts under discussion, and reclaim this immense domain, and hold it unimpaired as the fund, out of which to liquidate our national debt.

I venture the opinion, though with great hesitation, that these grants were void from the beginning. That they are repugnant to the principles of our free institutions, and in violation of the Constitution of the Republic of Texas.

I will again read from Vattel, page 176—"The prince or superior of society, being naturally no more than the administrator and not the proprietor of the State, his authority as sovereign or head of the nation, does not of itself give him the right to alienate or dispose of the public property. The general rule then is, that the superior cannot dispose of the public property as to its substance. If the superior makes use of this property, the alienation will be invalid, and may at any time be revoked by his successor, or by the nation. This is the law commonly received in France, and it was upon this principle that the duke of Sully advised Henry IV. to resume the possession of "all the domain of the crown alienated, by his predecessor." Now, there is no principle in our social compact; no power in our Constitution which authorizes either the Congress or the President of the Republic to dispose of such extensive districts of the public domain.

Without pretending to be prepared to pursue this branch of my argument, I will state that our Constitution has its theory, made with reference to a certain idea, to which these contracts stand in obvious contradiction. In no country where the principles of absolute political equality are held true, principles which our Constitution is held to conform to, can any department of the government, without an express warrant, invest any one citizen with millions of acres of her public domain, and to the exclusion too of the rights of her citizen soldier, and humble but honest pioneers, who had a previous substantive interest in this domain.

Again, Vattel says, on page 231:—But if a private person arrogates to himself an exclusive right to a country in order to be a monarch, people will laugh at his vain pretensions; a false and ridiculous possession can produce no real right.

I know these authorities are not directly in point. I read them, believing they bear very closely upon the subject.

If the vain pretensions of individuals to large districts of country with the view of building up a monarchy, be regarded as ridiculous in countries not politically free, how ridiculous should such pretensions be regarded in our own country?

One of these grants is made to a German prince. What his visions of future aggrandizement are, I know not. Surely it would not be very consistent with our free institutions, to permit him or General Mercer, or the other contractors, to fill their immense estates with obedient vassals.

To place these contracts in the most favorable light, they must be considered not as private or ordinary grants, but of grants of public policy, made for political ends; and, consequently, repealable at pleasure by the law making power of Texas. The land specified in these contracts, is not vested in the contractors, only so much as they may be entitled to as premiums for the actual introduction of emigrants, of which we propose not to divest them. The purpose for which the contracts were made, was to ensure a rapid and dense settlement of our frontier districts of country. Had this policy been founded in wisdom, 'tis now no longer needed; it is superceded by the change, now taking place in our relations with the United States.

But I assert, that the object for which they were granted has been totally defeated, by the manner in which the contractors have been carrying them out. Instead of sectionizing the country, building cabins and bringing families and settling them on the alternate sections, they have held back, importuning Congress for extension of time, waiting for the country to fill up with emigrants, with the fraudulent intention of deriving princely fortunes from their contracts, without fulfilling any of the obligations on their part.

In the mean time, as emigration flowed into the country, from the pitiful quantity of land offered by the contractors, and seeing the country unprepared for their reception, the emigrant would leave the colony and go where he could settle himself free from any restraints, and procure as much land as he wanted.

The right to appropriate land, as special or private property, was a question long mooted among philosophers of other days. The great Locke laid it down that we could rightfully appropriate so much, and only so much as we might need for the plough, or to graze our flock, only so much as we can mix our labor with.

No human power can sever from the great common of nature, and confer upon man any more land than he can advantageously use for the benefit of his race.

These grants, then, are alike repugnant to the lessons of philosophy, the principles of our free institutions, and the policy of our country; and to abrogate them, we have produced authority from the law of nations, and a precedent from the United States May we not appeal to the candid and enlightened everywhere, for the morality of our acts in annulling them?

With regard to the amendment proposed by my friend from Galveston, [Col Love,] I feared it did not meet the mischief, and was constrained though reluctant to oppose it I understand it to be a rule of law, thus in a grant with a condition subsequent, if the condition be varied by the grantor, or becomes impossible through the act of the government, the estate cannot be divested I know not what construction courts may put upon these contracts; and think it not safe to dispense with any of the conditions. I fear in stopping the introduction of emigrants, we will be playing into the hands of the contractors, and enable them to reap princely fortunes, without expending a single dime, excepting fees to the lawyers for quieting their titles in the courts

Gentlemen assure us that the contractors have forfeited their contracts by a non-compliance with their conditions, and assure us that the courts will set them aside.

I have no great confidence in the integrity of human tribunals. When—where has ever a large grant to land been set aside in the courts of the United States?

The Supreme Court of the United States has repeatedly affirmed grants upon principles of law which violate the plainest dictates of natural justice, as understood and felt by all men of sound moral constitutions, who are not trained to the profession of the law, or hardened by the commerce of the world.

In Arkansas, some years since, the most flagrant frauds ever conceived of were sustained by the courts, in what was then known as the Lovely claim

The United States took from Arkansas, while yet a territory, a portion of her settled country, and gave it to the Cherokee Indians. To remunerate her citizens for the loss of their improvements, Congress granted to each cultivator of the soil of the years of majority, a half section of 320 acres of land.

Officers of government opened offices to hear proof and grant claims to those entitled to them When these claims became valuable in market, a few speculators, in combination with some two or three or more of these same government officers, conceived the idea of supplying the demand, being very respectable, and scrupling to commit the crime of perjury, they resorted to various devices, to still the expostulating voice of conscience.

Mud men were actually made, named and received claims in due form. Little boys, with slips of paper on which were written the words "twenty-one years of age" in their shoes, were caused to swear that they were over twenty one years of age.

These frauds were notorious But the chief men of the country, the politicians, the lawyers and the judges became the innocent purchasers, and they were all established—upon some principle or other of law—perhaps thus fraud is never to be presumed—or perhaps thus no one can be heard against the official acts of government agents.

I cannot go with my friends in denouncing the Mercer contract as peculiarly fraudulent. I have had the pleasure of personally knowing General Mercer, and believe him above the suspicion of fraud; but he is a speculator, and, unfortunately for the interest of humanity, gentlemen of his order and class think it all laudable and right to make all they can out of governments.

I think favorably of the contractors of Peters' colony. They have done some little towards settling their colony, as far as they have gone I would pay them their premium lands.

No doubt this contract, and the others also, were conceived by our government to be for the best interest of the country. But then the contractors all have failed, wholly failed to comply with either the letter or spirit of the contracts, and have forfeited all their rights under them. The interest of the country demands that we should abrogate them. We propose to secure the contractors in their premium lands, and the colonist in his home.

I hope the House will pardon me for the very inartificial manner of my address, as I have no time to arrange my thoughts.

In conclusion, I will notice what seems to be the main argument of the gentleman from Nacogdoches, [Gen. Rusk] and pressed with more or less confidence by every other hon. deputy who has spoken in the opposition: that is, that Texas is already partially in the Union, and consequently, under the Constitution of the United States: or that she will be, before we could give this fiat any force. From this they argue that we can pass no law impairing the obligation of contracts.

Texas, up to this very day, is an independent sovereignty in full possession of all her powers. She can break off at pleasure her negociations for annexation, can emit bills of credit, can make treaties which will be of binding force until the final act of the Congress of the United States shall merge her sovereignty in that of the United States.

I might grant to gentlemen, that Texas is now in the Union: that she can exercise no more power than can any one of the States; and that these contracts are of the description which fall within the meaning of the Constitution. Still Texas has the power to abrogate them. The people in Convention assembled might do so, were Texas fully incorporated in the Union.

The language of the Federal Constitution is, no State shall pass any law impairing the obligation of contracts.

The term *law* means a legislative enactment, and not a Constitution, order or decree of the people legislating in their sovereign capacity.

The framers of this instrument have their minds directed certainly to the law making power, and not to the judicial or sovereign power.

The argument and the authority produced to support it, prove too much: prove that we are violating the Constitution in almost everything we do. We violated it to day in extending the term of probation for a seat in the Legislature from six months to two and three years.

I will read from 1 Kent, 417.—"All incorporeal hereditaments, as immunities, dignities, offices and franchises, are rights deemed valuable in law, and when they are the subject of a contract or grant, they are just as much within the meaning of the Constitution as any other grant."

President Jones and all the officers of the Republic, have by contract a right each to his salary and the perquisites of their several offices. Their offices, every one of them, are just as much within the meaning of the Constitution, as are these colony contracts. All should alike fall before the sovereign authority of the people; all should be dissolved for the public good; should be made to yield to the public will solemnly and conscientiously expressed in the organic law of Texas.

Mr. Cazneau moved to adjourn until 4 o'clock. Lost.

On motion of Mr Forbes, the Convention adjourned until 3 o'clock.

3 o'clock, P. M.

Convention met—the President being sick, Mr Lewis took the chair, and called the Convention to order. Roll called; quorum present.

The 21st section of the General Provisions being first in order,

On motion of Mr. Wright, a call of the Convention was ordered.

On motion of Mr. Burroughs, the call was suspended.

Mr. Armstrong of R, moved to appoint a committee to wait on Messrs Rusk, Moore, Parker and Wood, who were sick, and receive their votes on Mr. Love's substitute for the 21st section of the General Provisions.

Upon which the ayes and noes were called, stood as follows:

Ayes—Messrs Armstrong of R, Baylor, Brashear, Caldwell, Clark, Cunningham, Evans, Forbes Gage, Hogg, Horton, Howard, Hunter, Jewett, Love, Lumpkin, Lusk, McGowan, McNeil, Scott, Smyth, Standefer, Tarrant, Van Zandt and Wright—25.

Noes—Messrs Anderson, Bagby, Brown, Burroughs, Cuney, Darnell, Everts, Hemphill, Henderson, Hicks, Holland, Irion, Latimer of L., Latimer of R.R., Lewis, Lipscomb, Miller, Navarro, Power, Rains, White and Wright—22.

So the motion prevailed.

Messrs. Armstrong of R, Smyth and Young, were appointed to wait on the above named members and receive their votes.

On motion of Mr Anderson, the 21st section of the General Provisions was laid on the table, and the report of the committee on Education was taken up; and the first section adopted.

In second section, Mr. Gage moved to strike out the word "shall" in the first line, and insert the word "may."

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs. Brown, Bagby, Gage, Hemphill, Hicks, Hogg, Lumpkin, McNeil, Rains, Runnels and Young—11.

Noes—Messrs Anderson, Armstrong of J., Baylor, Bache, Brashear, Burroughs, Caldwell, Clark, Cazneau, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Henderson, Holland, Irion, Latimer of L. Latimer of R R. Lewis, Lusk, Lipscomb, Mayfield, McGowan, Miller, Moore, Navarro, Power, Parker Runnels, Standefer, Tarrant, Ochiltree, Van Zandt, White and Wright—41.

So the amendment was rejected.

On motion of Mr. Cazneau, the report of the committee on Education was laid on the table, and the 21st section of the General Provisions, with the substitutes, were again taken up.

The ayes and noes being called on the adoption of Mr. Love's substitute, stood as follows:

Ayes—Messrs President, Anderson, Armstrong of J. Bagby, Bache, Brashear, Burroughs, Caldwell, Cazneau, Clark, Darnell, Forbes, Hemphill, Henderson, Hicks, Hogg, Howard, Holland, Irion, Lewis, Love, Lipscomb. McGowan, Miller, Moore, Navarro, Rains, Runnels, Smyth and Ochiltree—30.

Noes—Messrs Armstrong of R., Baylor, Brown, Cunningham, Cuney, Evans, Everts, Gage, Horton, Hunter, Jewett, Jones. Latimer of L., Latimer of R. R, Lumpkin. Lusk, Mayfield, McNeill, Parker, Power, Scott, Standefer, Tarrant, Van Zandt, White, Wright, Wood and Young—28

So the substitute was adopted.

Mr Brown moved to strike out the last clause of the substitute in relation to the suspending of the contracts.

Mr. *Moore* said: Although still feeble from the effects of my late illness, I feel called upon to make a few remarks upon this question. If we rescind these contracts, what will be the result? Suits will be instituted against Texas in the courts of the United States, the decisions may be adverse, and a heavy amount of damages be awarded against her But if we let them alone they are harmless. The contractors cannot fulfil the conditions of their contracts The terms are so rigid that very few colonists can be induced o comply with them to the very letter, and unless the Legislature is authorized to modify them, they will all fall by the act of the contractors themselves, and the lands will revert to the government and be a source of revenue. But perhaps it may be asserted that to suspend these contracts does not violate a contract. Mr President, let me appeal to your own sense of honesty and honor, and I know that I appeal where these attributes are possessed, to pursue this course in a transaction with another as a private individual, would bring the blush of shame upon your cheek: and will you consent to do that in a collective capacity which you would not do as an individual? Texas has been slandered; she has to exist but a little while as a nation, and while she does so exist, let her escutcheon be unsullied. If these were the last words I should utter, I would cry out to my countrymen to regard her honor as sacred to the last. It has been won with toil, suffering and blood, and I trust it will be preserved: I feel confident that there is honor and honesty enough yet among us to maintain it. But if this section prevail, I must consider that honor as tarnished. I believe that these contractors in Europe, many of them men of wealth, influence and intelligence, and also in the United States, will raise against us a cry of disapprobation: they will point to this measure as a stain upon our character, and charge us with dishonesty. While I use these terms, let me not be considered as casting one single reflection upon the honorable members about me. I have seen the honesty and integrity which they have displayed here: but I know that the best of men, sometimes from prejudice, and sometimes from wrong information, are liable to act wrong. Whether a popular clamor through the country has urged some to sustain this measure, I know not. I am aware that there have been some cries of disapprobation recently heard along the frontier; but these opinions do not extend widely through the country. In my own section there have been but few complaints upon this subject, but few in the middle, few in the eastern sections. The people believe that these contracts were made under the authority of a law passed by the Legislature. they know they have been ratified by two of their Presidents; and they know that repeated attempts have been made to violate these contracts, and that the bills have been vetoed: and they have sanctioned, and sustained the measure. I know of but few people in the country who are willing that a contract should ever be violated. They say the policy may have been bad in the beginning, but we must submit to the evil. They consider, and I believe correctly, that it would be dishonest, unjust, and injurious to our national reputation to abrogate or even to suspend these contracts. But I believe it is the opinion of most intelligent men in the country, that the conditions have not been complied with, and whenever they shall be investigated, I am satisfied that proof upon proof will be adduced to show that not one of the contracts can be sustained. Why then for fear of a remote evil should we do an immediate wrong? I am too feeble to proceed further. I still hope, sir, that this question may be acted upon with that deliberation and caution, and regard for the national honor which the subject demands.

The ayes and noes were called upon the motion to strike out, and stood as follows:

Ayes—Messrs. Baylor, Bache, Brown, Burroughs, Cazneau, Cunningham. Cuney, Evans. Evetts, Forbes, Gage. Hemphill, Henderson, Hogg. Horton, Howard, Holland, Hunter, Irion, Latimer of R. R., L[illegible] L[illegible] L[illegible] M[illegible] M[illegible] M[illegible] N[illegible] P[illegible] R[illegible] S[illegible] [illegible]der, [illegible] G[illegible] —38

N[illegible]—[illegible]

S[illegible]

M[illegible] of the substitute

"P[illegible]

W[illegible]

M[illegible] substitute of Mr. L[illegible]

"That [illegible] contract[illegible] by the President of Texas for the settlement and colonization of any [illegible] are declared null and void; [illegible] who may have been introduced or emigrated to the country under the provisions of [illegible] contracts, [illegible] [illegible] at the time of the adoption of this Constitution by the people of Texas, [illegible] engaged to [illegible] this or any other settlements, shall be guaranteed in the quantum of land to which they were entitled by reason of their emigration: Provided, always, that the Legislature shall have power to pass laws necessary to enable said contractors who entered into contract with the President, to institute suits against the State for the recovery of any indemnity to lands to which they may be equitably entitled, and grant to them the premium lands to which they may be justly entitled."

Mr. *Jewett* said: I trust, Mr. President, that this House will see the propriety of adopting the substitute now proposed, and I cannot forbear expressing my hope that such will be the case. Every member who has spoken upon this subject has admitted the unconstitutionality and illegality of these contracts: and yet, sir, the phantom of *an annexation* seems to deter us all from adopting a remedy for this acknowledged evil.

"Now shrink the timid, and stand still the brave."

Sir, is the spirit of State Rights dead in Texas? The people expect us to pass some provisions securing to the soldier of the country those rights which they won in the battle fields, and to the early settlers the redemption of the pledges made them. I know I cannot boast the age and legal experience of the gentleman from Washington. But I will not be deterred from the performance of duty, by the apprehension of the rejection of our Constitution by the U S Congress. He has favored us with his scriptural reminiscences, and intimated that in relation to the abrogation of old grants to lands, made by our former Constitution, the language of that Congress to us may be, 'Go, brother, sin no more." I, too, have read the scriptures, and recollect another passage peculiarly applicable to this question. It is the parable of the barren fig tree. Our Savior, when he approached it and found that it bore no fruits, uttered his malediction against the barren trunk, and said, "Cut it down: why cumbereth it the ground." So, sir, would we say of these stupendous contracts, that have been barren of all good to the country. Cut them down—let them no longer cumber the ground.

The ayes and noes were then called upon Mr. Mayfield's substitute.

Mr. *Runnels* said: The section as adopted in my opinion does not embrace the desired object. I voted for the amendment proposed by the gentleman from Galveston, and regret very much that I did so, for I believe that had my vote been cast the other way, it would have produced a tie. I shall vote for the amendment offered by the gentleman from Fayette, because I believe it embraces the object designed to be reached by this Convention. I was disposed to compromise this question upon the amendment offered by the gentleman from Galveston: but inasmuch as the most important part of it, and the only one calculated to secure the country any protection at all against these enormous speculations has been stricken out, I shall vote for the substitute, or anything in any form or shape in which it may be presented, which will suspend these contracts upon principles of equity and justice. What are these contracts? They are of a political character. They were made with a view to the settlement of the country and the protection of the frontier. Time has passed: the condition of the country is different; and this policy has therefore ceased to exist. I am fully satisfied that it would be equitable for this Convention to suspend the operation of these contracts until they shall be fairly and equitably adjudicated upon. I do not go to the full extent of the amendment offered by the gentleman from Fayette. I believe that the contractors should be entitled to the benefit of all their operations, their labors and expenditures. But I believe that the important interests of the country require and demand of us to abolish these contracts and pay the individual contractors the damages they may sustain in consequence thereof. If we permit these contracts to go on, it is emphatically that the State of Texas will never be able to pay her national debt. Then are not the members of this Convention satisfied that it would be equitable to suspend these contracts, political in their character, compensating at the same time the contractors?

Mr. *Henderson* said: I shall be called upon, Mr. President, to vote upon this question. I have listened with a good deal of interest to the arguments of gentlemen who have advocated the nullification of these contracts, and had hoped that, with all their ingenuity, they would have been able to present me some clause or section by which we could remedy the evil without endangering the annexation of Texas to the United States.

I have listened diligently to their arguments, and I must be permitted to say that I have not heard the first reason given calculated to convey to my mind the impression that the dangers pointed out by my friend from Washington can be avoided. I have come therefore, to the determination that, so far as my vote is concerned upon this occasion, nothing shall divert me from the course which I am persuaded that the people of Texas, if they were here, and thought they understood this question as I think I understand it, would take. I am satisfied that they would say, if by adopting the clause proposed, or the amendment thereto, they would endanger the measure of annexation—they would say with one unanimous voice that they would be opposed to such interference.

Then the question results in this; shall we risk the great measure which we are sent here to advance, by adopting the measure proposed, or shall we pass it by, and suffer the evil? Who can doubt the choice which should be made? Sir, if I were asked to say whether Texas should remain free and independent, or whether we should give up the last foot of our domain, I would say we should abandon that, and take annexation. Then I am opposed to the amendment, because I think it will infringe that part of the Constitution of the United States which declares that no state shall pass any law impairing the obligation of a contract. Is this a contract? Have we not in the very section under consideration styled and regarded it as such? If it is a contract, illegal or legal, and we adopt such a clause in our organic law, we are offering to the United States and asking them to accept or approve a Constitution embracing a clause which does contravene an express and plain provision of the Constitution under which we propose to come and live. Is not this the case? And I would ask gentlemen to show me the difference between the power of a State after it is in the Union to pass a law impairing the obligation of a contract made by that State with any citizen, and that to place a similar clause in a Constitution which is to be submitted to the United States government for its sanction. Where is the difference? It is here; that in the one case the Legislature may repeal such an act, while in the other it is an organic law; and the objection. I take it is more forcible to an act of this description than it would be to a legislative act. The United States has presented certain resolutions to us, which in substance say, you may be admitted into the Union by adopting a Constitution, with the consent of your people and government, which is to be republican in its form, and it will be ratified if not anti-republican or repugnant to the provisions of that of the United States. But we are told by gentlemen that we have illustrious instances and examples where other States have impaired the obligation of contracts, and subsequently have been admitted into the Federal Union of North America. I grant the truth of the statement, and I say that these are not parallel cases. And for this reason. In the cases referred to, the States that interfered with and impaired the obligation of contracts had done that act and consummated it before they asked admission into the Union. We on the contrary propose a Constitution to the United States containing the declaration of this effect to impair such an obligation, and ask their sanction to that. And what do we ask them to do by proposing this Constitution for their acceptance? We ask them to sanction this unconstitutional law. We have taken upon ourselves to say to the contractors, until you prove to us certain facts, you shall not be permitted further to enjoy the privileges which you claim under these contracts. I care not whether they were legal in their inception or not; I do not pretend to say whether they were fraudulent or not; for this has nothing to do with the question. Let me ask gentlemen what we should gain by passing this clause, even though the United States should adopt it as a part of our Constitution? Suppose this Constitution were presented, and that no exceptions were taken to that clause, though plainly and palpably violating the Constitution of the United States, and that it should be adopted, would that make it legal and obligatory? Can the bare act of a majority of the two branches of the Congress of the United States repeal the Constitution? If not, then, I would ask gentlemen who advocate this provision, what good would result from enacting it here? Can it nullify these contracts? If I am correct in the view I take of this matter, it will do no good. But let us look to the evil; what evil will it do? We are told by honorable gentlemen that it can result in no evil. But suppose that my position should be regarded as a correct one by the members of the Congress of the U. States, the consequence would be, to say the least, that this Constitution would be sent back to the people of Texas to have it reformed, and they would be required to expunge this unconstitutional provision. That is the least evil we could expect.

But, sir, when we look at the resolutions under which we are acting, we see that we are to be admitted under this as one of the conditions, that we present a Constitution which shall be republican in its form, and in no degree contravening any provision of the Constitution of the United States, on or before the first day of January next. And we can only hold that government bound to us by the pledge of the public faith, provided we *fulfil this* condition by the time specified: otherwise the U. States will be absolved from all sort of obligation to receive us at any period. That is the position in which we must regard ourselves as standing.

But, sir, we are asked by an honorable gentleman on my left, to say what power can question our acts if we pass this clause. I, sir, feel my strength and dignity when I say here as a representative of the people of San Augustine, that in this Convention I am forming a Constitution in part for them. But when I look to another quarter, I feel that I am controlled by a power more omnipotent than that people. I say it not in depression of spirits, not as a humble man, but in all due respect to my own position and that of Texas, that we are controlled by the United States. We can derive no benefit from what we are doing here, unless what we do and say is sanctioned by that government. It is true that if we were acting as an independent State there would be no power which could control us; because foreign governments do not take it upon themselves to interfere with contracts between private individuals and any government. But is that the case here? Are we passing a law which alone requires the sanction of the people and government of Texas? Are we remodelling or reforming a Constitution which requires nothing but our own sanction here and the sanction of the people of Texas? If I understand the matter rightly, this Constitution requires not only the sanction of this Convention, and of the government and people of Texas, but the approbation of the Congress of the United States. That Constitution under which we propose to enter and live, declares that Congress may admit new States into that Union, and that their treaties and laws authorize them to supervise the Constitution or organic law of a State which proposes to come into the Union. They have then, superintendence and control over our acts so far as regards this organic law. Here we present them a Constitution which, upon its very face, contains an article contrary to the Constitution under which they are acting, and which they are sworn to support: and even if they should overlook this clause, and should adopt our Constitution with this in it, and it should turn out to be the case that it impairs in any degree the obligation of any contracts, I declare it as my solemn belief, that notwithstanding Congress shall have adopted the Constitution containing this clause, yet inasmuch as they have not the power to alter their own Constitution, it would be the duty and the sworn duty of the judges to declare it inoperative. The gentleman from Fannin referred to the treaty with Spain at the time of the acquisition of Florida, as an instance in which the United States had suffered this course. Sir, what were the facts presented in that case? These, sir: that the Spanish government had made certain large and extensive contracts with individuals, and it is perhaps known by that gentleman, if not known by every other who has investigated the case, that the government of Spain had reserved the eminent domain, that she had the power to rescind these contracts whenever she chose, the power to say "from and after this day these contracts shall cease and be suspended." I would ask now, where has Texas reserved a power of this kind? If she has reserved it, it might have been a parallel case. With these views I shall oppose the amendment. If it were in the power of this government to suspend the operation of these contracts without endangering the great interests of Texas, and I were called upon to do that, on the ground that they were in their inception founded in error or bad policy, I might be disposed to say, "take from these individuals the contracts you have made with them, because they are against public policy," and I might want no other reason. But this is not the great question here. And I feel bound to enter my solemn protest against the adoption of any such provision. I would not hazard the success of the great measure we are called here to aid in consummating for all the public domain. I shall vote against that amendment, or any of a similar character, and, in doing so, I feel that I can lay my hand upon my heart, and look in the face of God and say, "I have not sinned."

Mr. *Love* said: I did not wish to enter into a discussion of this kind. Although I did not myself question the power and right of this Convention, uncontrolled by the United States or any other power, to annul any contract, without the fear of any consequences, still I have been desirous to avoid it, more on account of the fears expressed by others, than on account of any entertained by myself. Having failed in the object aimed at in the amendment which I offered, I am now prepared to vote for the absolute nullification of these contracts, and I think I can show conclusively that, in doing so, we do not interfere with any clause whatever in the Constitution of the United States. In the first place, we have heard a great deal about that clause of that Constitution which says that no State shall pass any law impairing the obligation of a contract. Now sir, I deny the existence of a solitary dictum or decision among those of the Supreme Court, and I defy gentlemen to produce one, which applies that clause of the Constitution to the sovereign act of a State. Look at every decision upon the subject; and you will find that they apply exclusively to contracts between man and man in different states. And what was the object of the introduction of this clause? It was to prohibit a State from passing any law allowing its own citizens to repudiate a debt.

Yet we are told that it applies to the sovereign act of a State, and that it is contrary to this provision of the Constitution of the United States for a State to nullify a contract, or declare it to be null and void. What did the Supreme Court say in the great Yazoo case? Did it not expressly recognize the right of the State of Georgia to nullify the contract in consequence of fraud, not through the judicial tribunals, but as an act of the State? I hold with the gentleman from Fannin, though I may be considered radical in my opinions, that there is no power but the power of God, which can restrict the acts of this Convention in its legislative capacity, provided we frame and submit to the United States a republican form of government. That government has no right to question the power of a State to regulate its own internal policy. It has made but a single requisition, which is nothing more nor less than this: that we should regulate that policy in a republican manner. The States are sovereign and independent within themselves; and so that they have a republican form of government, there is no power which can control them in the Constitution of the United States. By the Constitution of the United States, a citizen is absolutely precluded from bringing a suit against a sovereign state. Where then, sir, is the force of the gentleman's argument, when he tells you that if you annul these contracts by your act in this Convention you do no good, but only give a right to Charles Fenton Mercer and others to prosecute suits against you for a violation of their contracts, when if he had turned to the Constitution of the United States, he could have found that citizens are absolutely prohibited from bringing suits against a State? Let me draw the attention of the Convention to the state of things which will arise in the Congress of the United States, the thoughts of which make gentle- so sorely afraid to vote for any thing to secure the rights of the people. How shall we stand there? We, by a solemn act of legislation, and in our Constitution first declared, that all the public domain should be subject to location under the claims of the men who participated in the revolution. Afterwards bonds and promissory notes were issued with the pledge that the public domain should be held sacred for the payment of the public debt. Subsequently the Legislature of the country, for a purpose supposed best at that time, made these stupendous contracts. said to embrace the enormous quantity of thirty millions of acres. I am not disposed to enter into the discussion of the question of fraudulency, for I wish to exclude every thing not necessary to the proper understanding of the case. We then present our Constitution to the Congress of the United States for acceptance. We have arrayed on one side the soldiers, the bond holders, &c., and on the other Charles Fenton Mercer and the Dutch prince with their enormous claims. Now would gentlemen have me believe, under these circumstances, that the Congress of the United States, in a great national question which has overleaped all law and every thing which has come in its way, would stop the prosecution of a great national measure, and appoint a committee to investigate the fact whether the people of Texas had the right to annul these contracts; that they would overlook the dangers connected with the subject of slavery upon our borders, and would say to C. F. Mercer, your claim is paramount to every other consideration, and we will reject this Constitution, because you made with Texas a contract which, if carried out, would give you upwards of three millions of acres of land? Is not this the strangest idea that ever entered the brain of a sensible man, that they would reject our Constitution because, forsooth, we may possibly not have acted strictly within our constitutional limits? Now what is the fact ?It is asserted that we have legislative and not judicial powers. It is granted that we have the power to create courts to investigate any question we please, and to nullify, or to declare them void if they choose. Now to make the principle good, you must maintain that the power creating is a less power than the power created. Sir, is it to be supposed that the Congress of the United States would enter into such an investigation? When Louisiana was annexed to the United States, it was thought to require an amendment to the Constitution. Now what did the great democratic party do, sir? Did they stop to cavil? Not at all sir. The federal party said it was unconstitutional, and that this measure would arrest or dissolve the government, but the great democratic party did not stop; they were satisfied it was necessary to the safety of the great American Union, and they carried it through.

The influence of C. F. Mercer has been alluded to. His contract, sir, was made under most suspicious circumstances. I will not say it was made in fraud, as Capt. Tyler would say, *per se*, but it was made contrary to the wishes of the people of Texas. And the President, in any other country but Texas, would have been impeached and removed from office. The bill which has been alluded to had passed almost unanimously the representatives of the people; it was vetoed by the President, and passed over his head: and yet in utter contempt of the wishes of the people, he made this contract with Charles Fenton Mercer, which gave him 3,500,000 acres of land. I do not wish to believe that he took a bribe; it was his self-will which induced him to carry out his own feelings, his own views and wishes; and then as in many other instances, he chose to show his contempt for the people. Now suppose this matter to be investigated before the Congress of the United States, and that the contract of Charles Fenton Mercer is spread before them, does he come there recommended to their sense of justice? No, sir: but as one who has himself perpetrated a fraud upon the body politic of Texas. Upon the subject of the power of this Convention, I will go so far as to say, sir, and I defy any gentleman to produce authority which will contradict it, that it has never been decided in the United States either by the State Courts or the Supreme Court, that a State in framing a new Constitution has not the right to nullify any privilege she has before granted to any individual.

It was my wish that these matters should be investigated judicially; but this House having entertained a different opinion, and not having the slightest conscientious scruple upon earth with regard to our right to nullify these contracts, I shall now vote to declare them null and void.

Mr. Ochiltree moved the appointment of a committee to wait upon the sick members and receive their votes. Lost.

Mr. Latimer of R. R, moved to adjourn until half-after 8 o'clock, to-morrow morning. Lost.

On motion of Mr. Ochiltree, a call of the Convention was ordered.

On motion of Mr. Cazneau, the Convention adjourned until half past 8 o'clock, to-morrow morning.

Thursday morning, Aug. 21, 1845.

The Convention met pursuant to adjournment, and was opened with prayer by the Chaplain.

Mr. Lipscomb offered the following ordinance, by way of compromise:

Be it ordained by the people of Texas in Convention assembled, That all contracts with the government of the Republic of Texas, for settling colonies be, and the same are hereby annulled from and after the adoption of this ordinance by the people.

And be it further ordained, That all persons who are actually settled under such contracts, shall be guaranteed in the quantity of land they claim under such contract: Provided, it shall not exceed six hundred and forty acres to a head of a family, and three hundred and twenty acres to single men.

And be it further ordained, That all persons aggrieved by the recision of their contracts, be authorized to sue the government of Texas to recover such premium lands as they may be entitled to.

And be it further ordained, That this ordinance be submitted to the people for their adoption, at the same time the Constitution shall be offered to them; and if ratified by them, shall be considered binding and in full force to all intents and purposes.

On motion of Mr. Parker, the rule requiring the ordinance to be read on three several days, was suspended.

On motion of Mr. Caldwell, the substitute of Mr. Love to the 21st section of the General Provisions was taken up, and

On motion of Mr. Lipscomb, the ordinance and substitute were referred to a special committee, to consist of 15 members.

Mr. Jewett offered the following ordinance:

Whereas, the various contractors who have entered into contract with the President of Texas, for settling the vacant and unappropriated lands of the Republic, have generally failed in establishing their settlements, and giving that protection to the frontier contemplated by the terms of their contracts. and whereas, the continuance of these contract is highly detrimental to the public interest:

Therefore, it is resolved expedient to submit the following ordinance to the people of Texas, to be voted upon at the same time when they may vote, for the adoption of the State Constitution; and if a majority of the qualified voters shall vote in favor of this ordinance, then the same shall have the force and effect of a law, from the time the people shall vote thereon.

ORDINANCE.

Be it ordained and decreed by the people of Texas, That all colonization contracts for settling the vacant and unappropriated lands of the Republic of Texas, heretofore made with the President thereof, shall cease from and after the adoption of the State Constitution by the people of Texas, but the rights to lands of actual settlers introduced by the contractors within the limits of any colony before the adoption of this Constitution by the Congress of the United States, are hereby guarantied, and the contractors shall have titles granted them for their premium lands, in proportion to the number of colonists introduced and settled within their respective colonies, so soon as they may have established in the courts that their contracts were constitutional and legal, and that they have complied with the conditions of the same.

Mr. Cazneau moved a suspension of the rule requiring the ordinance to lay on the table one day, which was carried; and the ordinance taken up and referred to the special committee on colonization contracts.

Mr. Rusk moved that the committee just raised consist of 15 members. Carried.

On motion of Mr. Mayfield, the select committee was instructed to take into consideration the report of the Commissioner of the General Land Office, and particulary that part relating to the 24,331,764 acres of land supposed to be located by fraudulent certificates.

Mr McNeil offered the following as an additional section, to come in after the 21st section of the General Provisions:

"All titles to land granted by the government of Mexico, or of Coahuila and Texas, under the colonization laws or otherwise, lying within the limits of this State, and which shall not be recorded, or filed for record in the recorder's office of the respective counties in which the land lies; within one year from the meeting of the first Legislature, under this Constitution, shall be forever barred, and be considered vacant: Provided, that the titles of lands of minor heirs, and *femes covert*, may be exempted from the provisions of this article in such manner as the Legislature shall direct."

Which, on motion of Mr. Van Zandt, was referred to the Judiciary committee.

Mr. Wright offered the following as an additional section, to come in after the 21st section of the General Provisions:

"In all suits where a citizen of this State may be a party litigant against any contractor, empresario, or other description of grantees, it may and shall be lawful for the person claiming, to set forth any plea that it would be competent for the State to do, and the party may introduce testimony to prove the claim to be forfeited, as well for the illegality or unconstitutionality, as on account of failure to comply with the conditions of the original grant, and the pleas shall be deemed good and valid, in all such suits in this State."

Which was referred to the committee of fifteen, to whom was referred the section and substitutes in relation to the colonisation contracts.

Mr Cazneau moved to lay the report of the General Provisions on the table. Lost.

On motion of Mr. Lusk, his additional section to the General Provisions in relation to the appointment of tax collectors and assessors was taken up.

Mr. Darnell moved to insert, after the word "taxes," "alloverseers of roads."

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. Burroughs, Cunningham, Cuney, Darnell, Evans, Hicks and Latimer of R. R.—7.

Noes—Messrs. President, Anderson, Armstrong of R., Baylor, Bagby, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Everts, Forbes, Gage, Hemphill, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Latimer of L., Love, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—40.

So the amendment was lost.

Mr. Rusk moved to amend by adding to the section the words "by and with the advice and consent of two-thirds of the Senate." Carried, and

On motion of Mr. Rusk, the word "*annually*" was stricken out, and the word "*biennially*" inserted.

Mr. *Rusk* said: I hope the section will not pass. We shall be thrown entirely upon the direct taxes for the support of the government. The office of collector and assessor is a very pitiful office, and not worth going before the people for. Let the responsibility rest with the Governor, and he will elect such men as will discharge their duty If things go on as they have done, what has occurred will occur again. I have heard a certain county charged with not paying its taxes, when, to my certain knowledge, they have been paid, but have not been handed over. The adoption of this section will do away with a great deal of heart-burning.

Mr. *Darnell* said: This office of collector and assessor may become a very important office; and we are not fixing this matter for the time being only: we are giving the Governor of Texas in this Constitution a patronage of about three hundred appointments. I contend that this will eventually be an important office, and one by which influence might be wielded, and perhaps improperly. As regards the collection of taxes, perhaps a similar plan might be best for the next two, or perhaps ten years, But let us give the power to the Legislature, and not to the Governor.

Mr. *Jones* said: I agree with the gentleman in his general argument, but I differ widely in the conclusion. In one sense this office is of importance at this time, though unimportant so far as it regards the honor and emoluments connected with it. Unless some mode of this kind is provided, judging by the history of the past, it will be impossible to collect enough to support the government. Unless these officers are made entirely independent of the people, you will never receive the money collected by them, and in many instances it will never be collected. I believe that, though this is an unimportant matter to the holders of these offices, it is very important to the prosperity of the country, that some way be provided to place them beyond the reach of the people. With regard to the patronage of the Governor, I differ entirely from the gentleman from San Augustine. It is true that the Governor has the nomination, in the case referred to, but the Senate has the appointment; and two-thirds of that body I think a sufficient check upon him. You place responsibility upon the Governor, without any power whatever. He is responsible for the good and bad appointments he may make, but has very little control over the matter.

Mr. *Cunningham* said: I hope it will not be adopted. There has been no Constitution adopted upon the American continent which has evinced so great a distrust of the Legislature as this: and, I venture to say, none which have reposed such unlimited confidence in the Executive. It is through the office of tax-collector that the whole money of the State goes into the treasury of the State, and that treasury if used properly, may give a vast authority to the Governor. I can see no reason why a provision like this, new and unknown to any Constitution in America, should be inserted in ours. I do not know how to account for this exceeding distrust of the Legislature, coupled with the most unbounded confidence in the Executive, unless it proceeds from a want of confidence in the people. If the people are dishonest, will not the Governor be likely to be more dishonest? I think the nearer we approach the people, the more certain we shall be to have honest officers.

Mr. *Rusk* said: I hear so much said about the Governor's being a very bad man, that I will move to strike out "Governor" and insert "Treasurer." I am not so much afraid of the people as some gentlemen; but I do not wish to trouble the people with the election of every thing. I knew a neighborhood in which the people went so far as to elect certain old women to perform certain duties.

Mr. *Anderson* said: I hope the section as it originally stood with the amendment of the gentlemen from Nacogdoches will prevail. The fears of the gentleman from Victoria do not operate upon me. If we are to have a Governor, we must give him some authority and some power, to make the office respectable, and to get the best talent in the country to fill it. We have a sufficient check to control his actions. The simple question here is, what is the best method to arrive at a speedy collection of the public revenue? This, then, is certainly the best. The Governor is responsible to the people for his acts; all officers appointed by him are responsible to him, and he to the people. But if you give this appointment to the treasurer, you create a petty Governor, which is not compatible with the institutions of our country. I do not wish to have two officers exercising patronage: if it is to be given at all, let it centre in one individual. In proportion as we diverge from unity, responsibility ceases. Where an appointment is made by the treasurer, the Governor will have to sustain the evil if any exists; and if he has to sustain the evil, let him have the appointment.

After some further debate,

Mr. Rusk moved to strike out "Governor" and insert "Comptroller."

Mr. Van Zandt moved as a substitute for Mr. Rusk's amendment, that the word "Comptroller" be stricken out, and the "qualified electors of each county elect their own assessor and collector."

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Everts, Gage, Holland, Hunter, Irion, Jewett, Lewis, Lumpkin, Mayfield, McGowan, McNeil, Navarro, Runnels, Standefer, Van Zandt and White—27.

Noes—Messrs. President, Bagby, Brashear, Caldwell, Forbes, Hemphill, Hicks, Hogg, Horton, Howard, Jones, Love, Lusk, Lipscomb, Miller, Parker, Power, Rains, Scott, Smyth, Tarrant, Ochiltree and Young—23.

So the amendment was adopted.

The question was then taken on Mr. Van Zandt's amendment, as an amendment of the resolution of Mr. Lusk.

Upon which the ayes and noes were called, and stood as follows;

Ayes—Messrs. Armstrong of J, Armstrong of R, Baylor, Burroughs, Caldwell, Clark, Cunningham, Cuney, Darnell, Evans, Everts, Gage, Hicks, Holland, Hunter, Irion Jewett, Latimer of L. Lewis, Lumpkin, McGowan, McNeil, Navarro, Standefer, Van Zandt and White—26.

Noes—Messrs. President, Anderson, Bache, Brashear, Bagby, Cazneau, Forbes, Hemphill, Hogg, Horton, Howard, Jones, Love, Lusk, Lipscomb, Mayfield, Miller, Parker, Power, Rains, Runnels, Scott, Smyth, Tarrant, Ochiltree and Young—26.

So the amendment was lost.

Mr. Hemphill moved to amend the section, by giving the election of assessors and tax collectors to the joint vote of both houses of the Legislature.

Mr. Cunningham moved the previous question, which was carried.

The ayes and noes were then called for on the adoption of Mr. Lusk's section, as amended, and were as follows:

Ayes—Messrs. President, Anderson, Bache, Brashear, Bagby, Brown, Cazneau, Everts, Forbes, Hemphill, Henderson, Horton, Howard, Jones, Love, Lusk, Lipscomb, Mayfield, Miller, Parker, Power, Rains, Runnels, Smyth, Tarrant, Ochiltree and Young—27.

Noes—Messrs Armstrong of J, Armstrong of R, Burroughs, Caldwell, Clark, Cunningham, Cuney, Darnell, Evans, Gage, Hicks, Hogg, Holland, Hunter, Irion, Jewett, Latimer of L. Lewis, Lumpkin, McGowan, McNeil, Navarro, Scott, Standefer, Van Zandt, and White—27.

So the section was lost.

On motion of Mr. Hicks, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

The President of the Convention announced the following special committee, to which the several ordinances offered this morning were referred:

Messrs. Lipscomb, Love, Henderson, Mayfield, Hogg, Caldwell, Smyth, Evans, Van Zandt, Lusk, Jewett, Lewis, Miller, Runnels and Wright—[illegible].

On motion of Mr. Young, the President was added to the committee.

Mr. Hemphill, from the Judiciary committee, made the following report:

Committee Room, Aug. 11, 1845.

To the Honorable Thos. J. Rusk,

President of the Convention.

The Judiciary committee, to whom was referred a resolution [illegible] and an ordinance [illegible] declaring in the constitution that all certificates of head rights, and all locations, grants and evidences of title [illegible] issued to fictitious persons, or forged, and the same were null and void from the beginning, have had the same under consideration, and instruct me to report the following substitute:

1st. All certificates for head right claims for land, issued to fictitious persons, or which were forged, and all locations and surveys thereon, are and the same were null and void from the beginning.

2d. The District Courts shall be opened until the close of the year one thousand eight hundred and forty seven, for the establishment of certificates [illegible] claimed to be genuine and legal, and the parties claiming under the same shall be subject to the requisitions which were necessary, and were prescribed by law, to sustain the original application for the said certificates; and all certificates above referred to, not established, or sued upon before the period limited, shall be null and void.

Respectfully submitted,

JOHN HEMPHILL, Chairman.

Mr. Young offered the following resolution:

Resolved, That all locations and surveys of land made previous to the 2d day of March, 1836, and lying north of the Sabine river, and within the twenty border leagues, were illegal and contrary to the policy of the country, and against good morals, and are hereby declared null and void.

Which was read, and laid on the table one day for consideration.

On motion of Mr. Wright, the report of the committee on General Provisions was taken up.

Mr. Wright offered the following as an additional section:

"It is hereby declared, that no admission made by any Attorney General, District Attorney, or other agent representing the interest of the State of Texas, shall, in any suit against the State, having for its object the recovery of any grant of land, made either by the government of Mexico, or the State of Coahuila and Texas; nor shall any admissions heretofore made by any officer of the Republic of Texas, representing the interest of the Republic, be admitted as valid in any suit or action against this State or any of its citizens, but shall be deemed an assumption of power not delegated him, and of no effect"

Mr. Cunningham moved to refer the additional section of Mr. Wright to the special committee of 15 appointed this morning.

Lost.

And, on motion of Mr. Cunningham, it was laid on the table.

On motion of Mr. Standifer, the additional section as offered by himsel, prohibiting the increase of the salaries of the Judges and Governor for ten years, was taken up.

Mr. Forbes moved to insert the word "diminish" in the section.

Mr. Mayfield moved a call of the house, which was carried; and

On motion of Mr. Brown, a further call was suspended.

The question was then taken on the amendment of Mr. Forbes, inserting the words "not diminish."

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. President, Brashear, Caldwell, Cazneau, Cunningham, Everts, Forbes, Hempbill, Henderson, Horton, Hunter, Love, Lumpkin, Lipscomb, Mayfield, McNeil, Navarro, Smyth, Ochiltree and White—20.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bache, Bagby, Brown, Burroughs, Clark, Cuney, Darnell, Gage, Hicks, Hogg, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lusk, McGowan, Power, Rains, Scott, Standefer and Young—27.

So the amendment was lost.

Mr. Smyth moved to strike out the word "Governor."

Lost.

The question was then taken on the adoption of the additional section.

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bache, Bagby, Burroughs, Clark, Darnell, Evans, Gage, Henderson, Hicks, Hogg, Horton, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin; Lusk, McGowan, Rains, Standifer and Ochiltree—29.

Noes—Messrs. Armstrong of J., Brashear, Brown, Caldwell, Cazneau, Cunningham, Cuney,; Forbes Hemphill, Lipscomb, Mayfield, McNeill, Navarro, Power, Scott, Smyth, White and Young—19.

So the motion was adopted.

Mr. Caldwell offered the following as an additional section

"The county court shall appoint an assessor of taxes, and a tax collector for each county, under such regulations as may be prescribed by law."

Mr. Young offered the following as a substitute for Mr. Caldwell's additional section, which was accepted

"The assessor and collector of taxes, shall be appointed in such manner and under such regulations as the legislature may direct."

Mr. Everts moved the previous question, which was carried

The main question being the adoption of Mr. Young's substitute to Mr. Caldwell's additional section, was carried and the substitute adopted.

Mr. Gage offered the following resolution

Resolved, That the committee on printing be instructed to contract for and cause to be printed   copies of the state constitution for the use of the members of this convention.

On motion of Mr. Young, the rule requiring resolutions to lie on the table one day for consideration, was suspended.

On motion of Mr. Gage, the blank in the resolution was filled with 1,000, and the resolution adopted.

On motion of Mr. Rusk, the vote adopting the additional section offered by Mr. Standifer, was reconsidered.

On motion of Mr. Cunningham, the convention adjourned until half past 8 o'clock to morrow morning.

Friday, morning, Aug. 22, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Lipscomb, chairman of the select committee, to whom was referred a separate ordinance in relation to contracts with the government of Texas for settling colonies, &c., made the following report:

Committee Room, Aug, 22, 1845.

To the Hon. Thos. J. Rusk,

President of the Convention:

The select committee, to whom was referred a separate ordinance in relation to contracts with the government of Texas for settling colonies. together with a substitute for the same: also the 21st section of the General Provisions, together with the several amendments and substitutes, &c, have had the same under consideration, and have instructed me to report in part that a majority of the committee are of the opinion that whatever action the Convention may take on the subject embraced by the matter referred to them, should be by a separate ordinance; should the Convention be in favor of the action, by a separate ordinance, the committee will prepare one for that purpose. But should the Convention prefer embracing the object as an article in the Constitution, the committee will prepare and report an article for that purpose to the Convention.

I am instructed to ask the sense of the Convention as to the choice of modes.

ABNER S. LIPSCOMB, Chairman.

Upon a point of order being made, it was decided that reports of committees were required to lay on the table, and come up among the orders of the day.

Mr. Young moved to suspend the rule requiring the report to lay on the table. Lost.

Mr. Mayfield presented the memorial of Commodore E. W. Moore, which was read.

Mr. *Mayfield* said: I will submit this memorial with a very few remarks It is well known to every gentleman upon this floor, that this gallant officer, while in the service of this government, was arrested upon certain charges, and deprived of his office. He then appealed to the Legislature of the country, and asked that he might have a hearing, and that there might be a fair and impartial investigation of the subject. The Congress of the nation established a tribunal for that purpose, which met, and investigated these charges, and pronounced a judgment which was disapproved of by the chief magistrate of the country. Subsequently to this the matter was taken into consideration by Congress, who exonerated him from the charges preferred against him, and exempted him from the effects, and that solemn act was likewise disapproved of by the chief magistrate. Again was the subject referred as directly as possible to the people themselves through their representatives, and they in the most solmen manner testified to the services rendered by this officer, and to the devotion with which he sacrificed himself and his fortune in the service of this State; and even that solemn act of the representatives of the people likewise met the disapprobation of the Executive. Under these circumstances, as he is a citizen of Texas, feeling as such, and as a patriot, and at all times nobly devoted himself to the service of his adopted land, and inasmuch as we are now about to lose our separate nationality and mingle with that great and glorious Union from which he sprang, by which he will be thrown back upon his native land, I think it our duty to render him, at least in the expression of our opinion, that justice to which as a soldier and a patriot we consider him entitled. This is the last opportunity which will be afforded us to express an opinion which may in some degree relieve him from imputations unjust in themselves, and oppressive in their bearing upon him. It is unnecessary to remind this Convention of the gallant bearing of this man upon all occasions when his country has been endangered, or her liberties threatened. It is unnecessary to point to the fact that he fills a high place among her naval and military heroes, and that he has perhaps contributed, if not more, as much as any other to add to the brightness and effulgence of her national flag. He then, upon this occasion, even at this late period in the session of this body, feels himself imperiously called upon to submit his case, in respectful but plain language, to the consideration of the Delegates of the people here in Convention assembled, that they may take such action in the matter as may seem consonant with wisdom and justice. In submitting this petition, I ask that it may be referred to a select committee, and at the same time, as the relations between that gallant officer and soldier and myself have been of the most intimate and friendly character, and as I was his counsel and advocate during the trial to which I have alluded, that I may be exempted from constituting a member of that committee.

On motion of Mr. Mayfield, it was referred, with the accompanying documents, to a select committee.

Mr. Horton offered the following resolution·

Resolved, That ——— numbers of the Constitution of of the State of Texas be printed in the Castilian language for the use of the population on our western frontier, and that the committee on printing be authorized to contract for the same.

On motion the rule was suspended.

On motion of Mr. Parker, the blank was filled with "500," and the resolution adopted.

Mr. Young offered the following article:

It is hereby declared the duty of the Attorney General of this State so soon as the organization of the same shall be completed, to institute legal proceedings against all colony contractors, and if upon investigation, all or any one of the colony contracts shall appear to have been unconstitutional, illegal, or that the conditions of said contracts, or either of them, shall not have been strictly complied with, they or either of them shall be declared null and void, provided that all settlers under the contracts shall be entitled to their lands as colonists, provided the same shall not exceed 640 acres of land to heads of families, and 320 acres to single men.

Sec. 2. In all suits when a citizen of this state may be a party litigant against any contractor, empresario, or other description of grantees, it shall be lawful for the person claiming to set forth any plea that it would be competent for the state to do, and the party may introduce testimony to prove the claim to have been forfeited, as well for the illegality, unconstitutionality, or on account of failure to comply with the conditions of the original grant, and the plea shall be good and valid in all such suits in this State.

On motion of Mr. Lewis, the articles were referred to the select committee, to which was referred the subject of colonization contracts.

Mr. Gage offered the following resolution:

Resolved, That James H. Raymond, Secretary of the Convention, be instructed to draw upon the Secretary of the Treasury of the Republic of Texas, for ——— dollars, the per diem pay and mileage of the Deputies in the Convention and officers of the same, to the 25th inst., inclusive, and disburse properly the same.

On motion of Mr. Love, the words "Secretary of the Treasury" were stricken out, and "Treasurer" inserted.

On motion of Mr. Gage, the resolution was laid on the table.

Mr. Wright offered the following resolution:

Resolved, That no motion for a re-consideration of any resolution or provision, once adopted, shall prevail, unless sustained by two thirds of the Convention.

Which was laid on the table one day for consideration.

On motion of Mr. Van Zandt, the article on General provisions was taken up

Mr. Armstrong of J., moved a re consideration of the vote adopting the 22d section. Lost.

Mr. Hogg offered the following as an additional section:

There shall not be more than three land offices in the State. There shall be a general land office established at the seat of government of the State; one subordinate land office in the town of Nacogdoches, in the county of Nacogdoches, and one subordinate land office in the western portion of the State, at such place as may be directed by law, whenever the Legislature shall deem it expedient; each of which land offices shall be subject to such regulations as the Legislature may by law direct.

Mr. Young moved to amend by striking out "Nacogdoches," and inserting "Clarksville."

Mr. Forbes moved to lay the additional section and amendment on the table.

Upon which the ayes and noes were called and stood as follows:

Ayes—Messrs. Anderson, Armstrong of I., Baylor. Bagby, Bache, Brashear, Burroughs, Caldwell, Cazneau, Cunningham Cuney. Everts, Forbes, Hemphill, Hicks, Horton, Howard, Hunter, Irion, Latimer of L., Latimer of R. R., Lewis, McGowan, McNeil, Navarro, Power, Runnels, Scott, Smyth, Tarrant and Wright—31.

Noes—Messrs. President, Armstrong of R., Brown. Clark. Darnell, Evans, Gage, Hogg, Jewett, Love, Lumpkin, Lusk Lipscomb, Mayfield, Parker, Rains, Standefer, Ochiltree, Van Zandt, White and Young—21.

So the additional section was laid on the table.

Mr. Cunningham moved to add the 3d, 4th and 5th sections of the Schedule to the General Provisions.

Mr. Horton moved to amend the 4th section by adding "and all such forfeitures and escheats shall be applied for the purpose of creating a common school fund."

Mr. Van Zandt moved the previous question.

The chair [Mr. Darnell] decided that the previous question would be upon the adoption of Mr.. Cunningham's amendment.

On motion of Mr. Rusk, the General Provisions was laid on the table.

On motion of Mr. Rusk, the report of the select committee, Mr. Lipscomb chairman, upon the subject of colonization contracts, was taken up.

Mr. Ochiltree moved to instruct said committee to report an ordinance.

Mr. *Hogg* said: Mr. President, inasmuch as I have hitherto said nothing upon this vexed question, I will attempt now to give my views upon this subject as concisely as possible. I feel as much as any man in this Convention the responsibility which I am under to my constituency and my country, and believing, as I do, that this question is one of more interest and importance than any which has arisen or will arise during the session of this body, I deem it proper that I should define my position upon thesubject. I believe that we are now about to approach one of the most sacred questions which can be agitated. If we incorporate anything in this Constitution repugnant to that of the United States, we are bound to suffer the consequences. The Congress of the United States will return our Constitution to Texas for amendment. Every member of this Convention certainly knows that the people of Texas are now wholly and heartily engaged upon the subject of annexation, and are desirous that we should take the most certain and practicable steps for its consummation. The question then aris s whether we shall insert in this Constitution which is to be the fundamental law of the land, an article which has been decided by men as learned in the law as any in this republic to be repugnant to the Constitution of the U: States. Is this a mere matter of fancy? Are men, sir, disposed to sport with the privileges dependant upon the speedy consummation of our union with the great American republic? Are they willing to take the bull by the horns, and incur the responsibility of having this Constitution as adopted returned, and suffer the consequences? I ask gentlemen to take a view of the state of things which would present itself in that event. It has been urged by many of our citizens, that this country has too long knocked at the door of the American Union for admission. It has been urged by individuals not now boldly and avowedly opposed to the measure that annexation is impracticable. Then if you thus throw open the door to these men by inserting an article in your Constitution which will cause it to be returned upon your hands, in my opinion they will not, as now, keep dark, but will come up in solid phalanx in opposition to annexation. Some men of standing in the country will take the lead, and all their influence to create a powerful opposition. Sir, gentlemen are sporting with the question of annexation, the matter of all absorbing interest to this country. Then why will they say that they are determined to insert in the Constitution of Texas, an article which is determined by men as much entitled to respect for their legal learning and constitutional knowledge as any men in the land, to be in conflict with the Constitution of the United States. If gentlemen are so anxious to insert a provision of this kind, let us establish it as an ordinance. Then the body of the Constitution will remain perfect, and the rejection of this provision cannot immediately injure the annexation of Texas. I consider the question to be this, whether annexation is of the most importance, or whether it is of more importance that these colonization contracts should be declared void. It has been asserted by some as good patriots as any amongus, that they would be willing to give up all their lands rather than be thwarted in this measure of annexation. I believe, sir, that my constituents would rather give up all the public domain, than to fail in this matter. I would cheerfully give up what lands I have, rather than have that event procrastinated for six months. The eyes of the civilized world are upon us; and if we disagree among ourselves, what consequences may we not look for? Gentlemen say that the incorporation of this measure by way of an ordinance will cast suspicion upon it. Admit that it will throw suspicion upon it with regard to its constitutionality and legality, do gentlemen for a moment suppose that the eagle-eyed politicians of the U. States will not as soon discover its character in the Constitution as in an ordinance? I am perfectly willing to insert it by way of ordinance. I am as much opposed to these contracts as any one, but I am not willing on this account to risk the success of annexation.

Mr. Cazneau moved a call of the Convention.

Lost.

The ayes and noes were called on Mr. Ochiltree's motion, and were as follows:

Ayes—Messrs President Bache, Burroughs, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Hemphill Henderson, Hicks, Hogg, Holland, Irion, Lewis, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Ochiltree and Young—30.

Noes—Messrs. Anderson, Armstrong of J., Armstrong of R., Baylor, Bagby, Brown, Caldwell, Cazneau, Clark, Evans, Horton, Hunter, Jewett, Latimer of L., Latimer of R. R., Love, Lumpkin, Mayfield, Runnels, Tarrant, White, and Wright—22.

So the motion was carried.

On motion of Mr. Horton, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Cazneau, the report of the committee on Education was taken up.

Mr. Lusk moved to strike out all after the word "state," in 2d line, 2d section.

Mr. *Clark* said: As I consider it perhaps my duty, I will say a few words in vindication of my course upon this subject. The part which the gentleman from Brazos proposes to strike out does not meet my hearty approbation. It did not in the committee; though I did not there object to it, knowing that I should have the opportunity here of expressing my dissent and acting accordingly. I think the motion of the gentleman a very proper one. I think unless we adopt it we shall be taxing the people too severely in the commencement. We must recollect that the amount to be derived from the people through taxation is very considerable; and I think that perhaps as far as we should go on this occasion. I intend to vote for the motion of the gentleman from Brazos to strike out, and as chairman of the committee I have thought it my duty to apprize the Convention of the reasons why I shall do so. The report requires no explanation; it is plain and simple.

The ayes and noes were called upon the motion of Mr. Lusk, and stood as follows:

Ayes—Messrs. Armstrong of J., Armstrong of R., Bagby, Brown, Burroughs, Clark, Darnell, Gage, Hemphill, Hicks, Hogg, Irion, Latimer of L., Latimer of R. R., Lumpkin, Lusk, McNeill, Navarro, Parker, Rains, Runnels, Scott, Smyth, Van Zandt, White Wright and Young—27.

Noes—Messrs President, Anderson, Baylor, Bache, Caldwell, Cazneau, Cunningham, Evans, Everts, Forbes, Henderson, Horton, Howard, Hunter, Jewett, Lewis, Love, Lipscomb, Mayfield, McGowan, Power, Standefer and Tarrant—23.

So the motion was carried.

Mr. Mayfield offered the following as a substitute for the second section:

The legislature shall, as early as practicable, establish free schools throughout the state, and shall furnish means for their support by taxation on property, and it shall be the duty of the legislature to set apart not less than one-tenth of the annual revenue of the state derivable from taxation, as a perpetual fund, which fund shall be appropriated to the support of free public schools throughout the State, and no law shall ever be made diverting said fund to any other use; and until such time as the legislature shall provide for the establishment of such schools in the several districts of the State, the fund thus created shall remain as a charge against the State, passed to the credit of the free common school fund.

Mr. Lewis offered the following as an amendment to the substitute:

Provided that the aforesaid fund shall be appropriated to the education of the children of those who are themselves unable to bestow upon their children the rudiments of an English education.

Rejected.

Mr. Forbes moved to amend by inserting "from and after the year 1850."

Lost.

The ayes and noes being called on the adoption of Mr. Mayfield's substitue, were as follows:

Ayes—Messrs. President. Anderson, Armstrong of R., Baylor, Bache, Brashear, Caldwell, Cazneau, Cuney, Evans, Everts, Forbes, Gage, Hemphill, Henderson, Horton, Holland, Hunter, Irion. Jewett, Lewis, Love, Lipscomb, Mayfield, McGowan, McNeil, Navarro, Standefer, Tarrant and White—30.

Noes—Messrs. Bagby, Burroughs, Clark, Darnell, Hicks, Hogg, Howard. Latimer of L., Latimer of R R., Lumpkin, Parker, Rains, Runnels, Scott, Smyth, Wright and Young,—17.

Mr. Gage offered the following as an additional section:

It shall be the duty of the Legislature to pass a law by which counties now in this State, which have not heretofore received grants of land shall be entitled to a donation of land for school purposes, equal to that heretofore granted to any county by the Congress of the Republic of Texas.

In presenting this additional section,

Mr. *Gage said*: Four leagues of land have been granted to most of the counties in the Republic for school purposes The law now in existence upon this subject is a general one, extending such a donation to all the counties created at the date of its passage. Some new counties, however, have been since formed, among which is the county of Rusk, to which the present law does not apply. It is the object of this section to place them on a footing with the older counties. An equal quantity of land is all that I ask for them, and I trust it will not be denied.

Mr Everts moved to amend by confining the locations of the land in the county for whose benefit the land is appropriated.

Lost.

On motion of Mr. Young, the word "now" in the first line of Mr Gage's additional section, was stricken out.

The ayes and noes being called on the adoption of the additional section, stood thus:

Ayes—Messrs. President, Baylor, Bache, Bagby, Cazneau, Clark, Cunningham, Darnell, Evans, Everts, Gage, Hemphill, Henderson, Hogg, Horton, Howard, Hunter, Irion, Jewett, Jones, Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Mayfield, McGowan, Navarro, Power, Runnels, Smyth, Standefer, White and Young—34.

Noes—Messrs. Anderson, Burroughs, Caldwell, Latimer of L., Lipscomb, McNeil and Scott—7.

So the section was adopted.

Mr. Darnell offered the following as an additional section:

Fifty leagues of land of the public domain of Texas, in addition to the amount already set apart by law, is hereby reserved for the use of common schools, to be used as the legislature may direct, but no disposition shall be made of the same under fifty years from the adoption of this Constitution. The legislature may authorize the lands to be located at as early a day as possible, and to make them as valuable as circumstances will admit, by lease or otherwise.

On motion of Mr. Hemphill, the following words were inserted:

"Provided the debts and liabilities of the government be first discharged."

The President announced the following as the committee on the memorial of Commodore E W. Moore:—Messrs. Love, Runnels, Cazneau, Horton, Caldwell, Brown and Wright.

Messrs. Love, Horton and Runnels were excused, and Messrs Anderson, Jewett and Everts were appointed in lieu of them.

On motion of Mr. Burroughs, the Convention adjourned until half-past 8 o'clock, to-morrow morning.

Saturday Morning, Aug. 23, 1845.

The Convention met pursuant to adjournment and was opened with prayer by the Chaplain.

Mr. Lipscomb, from the special committee, made the following report:

Committee Room, August 20, 1845.

To the Hon. T. J. Rusk,
President of the Convention:

The select committee to whom was referred an ordinance on the subject of contracts for settling colonies made with the government of Texas, also the substitute as amended by the Convention for the 21st section of the General Provisions, and the substitute offered and several resolutions in relation to the subject, have had the same under consideration, and in obedience to the instructions given, beg leave to report that this committee would respectfully recommend that the 21st section of the General Provisions, and the substitute and amendments thereto, and the one offered be rejected, and they recommend the adoption of the separate ordinance heretofore reported in lieu of the same.

All of which is submitted.

ABNER S. LIPSCOMB,
Chairman of Select Committee

ORDINANCE.

Whereas, various contracts have been entered into by the President of the Republic of Texas with divers individuals, with the expressed intention of colonizing an enormous amount of the public domain of Texas; and

Whereas it is believed that said contracts are unconstitutional and therefore void from the beginning, and in their operations, if carried out, would operate as a monopoly of upward of seven millions of acres of the public domain of Texas in the hands of a few individuals, when in truth the citizen soldiers and creditors of the Republic of Texas, had by the laws and constitution of said republic, a clear and indisputable previously subsisting right to locate upon the public domain thus attempted to be assigned to said contractors; therefore,

It is hereby ordained and declared, That it shall be the duty of the Attorney General of this State, or the district Attorney of the district in which any portion of the colonies may be situate, as soon as the organization of the State shall be completed, to institute legal proceedings against all colony contractors who have entered into contracts with the President of Texas, and if upon such investigation, it should be found that any such contract was unconstitutional or illegal in its inception, or that the conditions of the same had not been complied with according to its terms, such contract shall be adjudged and decreed null and void: provided, however, that all actual settlers under any such contract shall be entitled to their quantity of land as colonists, not to exceed six hundred and forty acres to the head of a family, and three hundred and twenty acres to a single man.

And in all such suits brought by or against any contractor, it shall be lawful for the adverse claimant to set forth any plea that it would have been competent for the State to plead, and the party may introduce testimony to prove the claim or title to have been forfeited, as well for frauds or illegality or unconstitutionality in its inception, on account of a failure to comply with the conditions of the original grant or contract, and any such pleas shall be deemed good and valid in law in all such suits in this State.

And be it further ordained, That this ordinance shall be presented to the people for their adoption or rejection at the same time this Constitution shall be presented to them, and the returns of the votes taken on this ordinance shall be made to the office of the Secretary of State of the Republic of Texas at the same time the votes for the Constitution may be returned.

On motion of Mr. Lewis, the report of the special committee and ordinance were taken up.

Mr. Mayfield offered the following as a substitute to the ordinance of the special committee:

Be it ordained, &c., That all colonization contracts made by the Secretary of State or the President of Texas with any undertaker or contractor for the settlement or colonization of any portion of the unappropriated or vacant lands of the country, are declared voidable, and shall be suspended and cease from and after the adoption of this ordinance by the people of Texas; nothing, however, herein contained shall be construed to limit or prejudice the rights to land of any actual settler or colonist living within the limits of any of said colonies, and who were introduced or emigrated under the provisions of said contracts; provided always, that the legislature shall have power to pass laws defining the mode and manner by which said contractors may sue or be sued either for the purpose of recovering any indemnity to which they may be equitably entitled, and ascertaining their respective rights to premium lands, or for the purpose of fully vacating and annulling any and all of said contracts.

Mr. Lipscomb offered the following amendment:

Strike out "or other description of grantee," which would leave it to the colonization contracts only.

Mr. *Love* made some remarks in favor of the amendment, and Messrs *Wright* and *Cunningham* spoke in opposition to it.

Mr. *Jones* made some remarks not heard by the Reporter, and continued as follows

I know something about these transactions at Monclova, and something about these eleven league grants. But because there has been fraud in some instances, would you rob those who have innocently acquired the title to their lands? Those who talk so much about these matters, in my opinion, know very little about them, if I may judge from their arguments. I am unwilling, sir, for the sake of half a dozen individuals who may wish to steal lands, to be compelled to establish what I cannot, that I have complied with all the requisitions of the law. Because it is well known that it was dangerous, and in fact impracticable to make the surveys required, and as to cultivating the lands, it was utterly impossible. I could perhaps, if necessary, give a full and accurate history of every description of land claims. but, on this occasion I will only say, that if these provisions or directions, for I do not know what to call them, shall be adopted and become a part of the Constitution or an ordinance, I, as an individual who have been here since the year 1822, and have honestly acquired my lands, will never defend any suit which may be brought against me. Much has been said, and much beautiful argument advanced, in relation to the poor soldier who has waded through blood and all that, and it is perhaps calculated to have a wonderful effect upon the members of this body. I, sir, unfortunately, have none of this honor. I came at an early period, as early as 1822; I expended three-fourths of my labors for years in defending and protecting my adopted country: I can say what some gentlemen here know to be the fact, that there have been few campaigns in which I did not participate. But unfortunately for myself, my health was such in '36, that I was not in the battle of San Jacinto, or any other fight of that period. At the same time I had richly earned all the lands which I have acquired, previously to 1836. If it should be the sense of the Convention to adopt a clause like this, which will sweep away my claims, I shall feel perfectly satisfied: and I pledge myself before God that I will not defend one of them.

Mr. *Young* said: I am pleased with the candor of the gentleman last up. He is the first individual I have seen who would honestly admit that he owned an eleven league claim. He tells you that if the ordinance passes, he for one will not contend for his claims. He tells you that he paid his money for them, and he tells you that there were conditions attached to them, with which he had not complied; because, he said, he looked upon them as trash, many of them, and many of them were disagreeable, and he would not comply with them. Now he contends that he is willing to place his claims at issue under the laws of the Republic: and if he is able to find a law which will protect a claim when it goes beyond a league and labor, he has seen what I have not. He insists that you shall not place the actual settler upon the same footing that he himself is. After having declared that he himself had not complied with the conditions and restrictions annexed to his grant, he asks that he may be placed above the citizens who may chance to settle upon it. I ask if this is just? It is not my object, nor that of introducing this section to interfere with any just and genuine claim. It is not the intention to interfere with claims amounting perhaps to four leagues. for services rendered. As far as they are concerned, I have no objection to leaving them out of the question But in relation to these eleven leagues, where they were granted for 200 dollars a league, I do contend for a rigid performance of the conditions, or that they shall revert back to the State.

Mr. *Jones* said: The gentleman confirms me in the opinion I have expressed, that those who have said the most about these matters, know the least. He says these claims were purchased for 200 dollars, I say, sir, without fear of contradiction, that the government received much more for these claims. I wish it to be understood that the legislature of Coahuila and Texas, the government being short of funds, authorized the Governor of the state to sell to Mexican born citizens certain quantities of land for the purpose of raising a revenue. The claim which I hold is but a part of an eleven league claim; it was purchased of the citizen who received the grant and paid the government an amount which was satisfactory therefor. There may be certain conditions which have not been complied with: but the conditions are such as apply to every grant of land made from 1822 to 1836. I say again, I feel certain that there is not one individual who has complied with all the conditions of his contract. Many of them were nonsensical, and with some it was utterly impossible to comply. In many parts of the country not a rock was to be found for miles, and one of the conditions required the throwing of rocks, the pulling of grass, &c.

The ayes and noes were called upon the amendment, and stood as follows:

Ayes—Messrs. President, Anderson, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Clark, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton. Howard, Holland, Hunter, Irion, Jewett, Jones, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, Miller, Navarro, Parker, Power, Rains, Runnels, Scott, Standefer, Ochiltree and Van Zandt—41.

Noes—Messrs. Armstrong of R., Bagby, Burroughs, Cunningham, Evans, Latimer of L., Latimer of R. R., Lewis, M'Neill, Smyth, White, Wright and Young—13.

So the amendment was adopted.

The question was then taken on the substitute of Mr. Mayfield.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Baylor, Burroughs, Caldwell, Clark, Forbes, Horton, Hunter, Jewett, Latimer of L., Latimer of R. R., Love, Mayfield, McNeil, Miller, Runnels, Ochiltree, Van Zandt and White—20.

Noes—Messrs. President, Bache, Bagby, Brashear, Brown, Cunningham, Cuney, Darnell, Evans, Everts, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Jones, Lewis, Lumpkin, Lipscomb, McGowan, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Tarrant, Wright and Young—32.

So the substitute was rejected.

Mr. Mayfield then offered the following substitute:

The Legislature shall, at its first session, pass laws providing the mode and manner by which all colonization contracts heretofore made by the Secretary of State or President of the Republic of Texas with any undertaker or contractor for the settlement or colonization of any of the vacant or unappropriated lands of Texas, as well on account of their unconstitutionality, illegality, fraud or non performance of said contracts, shall be vacated and fully annulled, and of extending to any of the said contractors the premium lands and rights to which they may have been equitably entitled, but no laws shall be passed limiting or prejudicing the rights of those who may have emigrated or settled within said colonies by virtue of said contracts to the quantum of lands to which such emigrant or settler may have been entitled.

Mr. Ochiltree moved to amend, by inserting after the word "Legislature," the words "if they deem it necessary."

Which was carried.

The President of the Convention announced that he had on his table a communication from the chief justice of Montgomery county, enclosing a certificate of the election of Charles B Stewart, as Deputy to the Convention from said county, which was read by the secretary, and ordered to be laid on the table.

On motion of Mr. Rusk, the proviso to the ordinance reported by the special committee on the subject of colonization contracts was stricken out.

Mr. Van Zandt moved to adjourn until 4 o'clock, P. M. Lost.

The last substitute offered by Mr. Mayfield was then taken up.

On motion of Mr. Forbes, a call of the House was made; and,

On motion of Mr. Young, a further call was suspended.

Mr. Mayfield moved to adjourn until 4 o'clock, P. M.

Motion lost.

On motion of Mr. Mayfield, a call of the House was made.

On motion of Mr. Young, a further call was dispensed with.

Mr. Mayfield then moved to adjourn until 4 o'clock, P. M. Lost.

On motion of Mr. Mayfield, a call of the House was made.

On motion of Mr. Ochiltree, the Sergeant-at-Arms was despacthed for absent members.

Mr. Henderson moved to adjourn until 3 o'clock, P. M. Lost

Mr. Howard moved to suspend a further call of the House. Lost.

Mr. Hunter moved to adjourn until 4 o'clock, P. M. Lost.

The absent members having appeared, the ayes and noes were called, on the substitute of Mr. Mayfield, and stood thus:

Ayes—Messrs. Anderson, Baylor, Caldwell, Cazneau, Clark, Evans, Horton, Hunter, Jewett, Lusk, Mayfield, McNeil, Runnels, Tarrant, Ochiltree, Van Zandt and White—16.

Noes—Messrs. President, Armstrong of R. Bache, Bagby, Brashear, Brown, Burroughs, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Latimer of R. R., Lewis, Lumpkin, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Wright and Young—34.

So the substitute was rejected.

Mr. Caldwell moved to insert the word "such" before the word "suits," in the ordinance reported by the special committee.

On motion of Mr. Gage, the word "Republic" was inserted before the word "Texas," so as to read "President of the Republic of Texas."

Mr. Evans moved to strike out the last section of the Ordinance.

Upon which the ayes and noes were called, and are as follows:

Ayes—Messers. Baylor, Caldwell, Cazneau, Evans, Hunter, Latimer of L., Mayfield, McNeill, Navarro, Runnels and Tarrant—11.

Noes—Messrs. President, Armstrong of R., Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Howard, Holland, Irion, Jewett, Latimer of R. R, Lewis Lumpkin, Lusk, Lipscomb, McGowan, Miller, Power, Rains, Scott, Smyth, Standefer, Ochiltree, Van Zandt, White and Young—38.

So the amendment was lost.

On motion of Mr. Evans, the words "of the Republic of Texas" were inserted after the words "Secretary of State."

Mr. Evans moved to insert the words "and that this Ordinance become a part of the Convention of the State of Texas."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R., Baylor, Caldwell, Evans, Howard, Hunter, Jewett, Latimer of L., Latimer of R R., Lumpkin, Lipscomb, Mayfield, McNeil, Runnels, Tarrant, White and Young—18.

Noes—Messrs. President, Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Horton, Holland, Irion, Lewis, Lusk, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Ochiltree and Van Zandt—31.

So the amendment was rejected.

Mr. Mayfield moved to amend by inserting the following:

"And all said contracts shall be suspended and cease from and after the institution of any suit or suits provided for by this Ordinance, until the final decision and adjudication of the same."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Baylor, Caldwell, Clark, Horton, Hunter, Jewett, Mayfield, McNeil, Tarrant, Van Zandt and White—11.

Noes—Messrs. President, Anderson, Armstrong of R., Bache, Brashear, Brown, Burroughs, Cunningham, Cuney, Darnell, Evans, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Latimer of L., Latimer of R R.; Lewis, Lumpkin, Lusk, Lipscomb, McGowan, Miller, Navarro, Power, Rains, Scott, Smyth, Standefer, Wright and Young—36.

So the amendment was rejected.

The question was then taken on the adoption of the ordinance reported by the special committee.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Bagby, Brashear, Burroughs, Caldwell, Cuney, Darnell, Everts, Forbes, Gage, Henderson, Hicks, Hogg, Howard, Holland, Irion, Lewis, Lumpkin, Lusk, Lipscomb, Mc Gowan, Miller, Navarro, Ochiltree, Power, Rains, Scott, Smyth, Standefer, Wright and Young—31.

Noes—Messrs. Anderson, Armstrong of R., Baylor, Bache, Brown, Cazneau, Clark, Cunningham, Evans, Horton, Hunter, Jewett, Latimer of L, Latimer of R R., Mayfield, McNeil, Runnels, Tarrant, Van Zandt and White—20.

So the ordinance was adopted.

The question was then taken on the engrossment, and carried.

On motion of Mr. Van Zandt, the report of the committee on General Provisions was taken up.

Mr. Mayfield moved the same be read.

Lost.

Mr. Mayfield moved to adjourn until 5 o'clock P. M.

Lost.

Mr. Mayfield moved that the General Provisions be read.

Motion lost.

Mr. Anderson moved to adjourn until half past 4 o'clockt P. M.

Lost.

Mr. Anderson then moved that the General Provisions be read.

The Chair decided the motion to be out of order as the question had just been taken on the same motion.

Mr. Gage appealed from the decision of the Chair.

Which appeal was lost, and the chair sustained.

The question was then taken on the engrossment of the General Provisions, and carried.

Mayfield moved to adjourn until half past 8 o'clock Monday morning.

Lost.

On motion of Mr. Howard, the Convention adjourned until five o'clock, P. M.

5 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

Mr. Ochiltree offered the following resolution:

Resolved, That the business not directly connected with the formation of the constitution and the passgae of the ordinance directing the changing of the government, shall be postponed until the constitution shall be finally passed and signed by the members of this convention.

On motion of Mr. Young, the rule was suspended, and the resolution adopted.

Mr. Everts moved to take up the ordinace in relation to the formation of an election precinct.

The President decided the motion to be out of order, as it was not in accordance with the resolution of Mr. Ochiltree just adopted.

From which decision Mr. Everts appealed, and the chair was sustained.

On motion of Mr. Hunter, the Convention took up the

ORDERS OF THE DAY.

Mr. Mayfield moved that the report of the Judiciary committee, in relation to fraudulent land certificates, be first taken up.

Which motion was lost.

Mr. Cazneau moved to take up the report of the committee on the state of the nation.

Upon which the ayes and noes were called, and stood thus:

Ayes—Messrs President, Armstrong of R., Baylor, Caldwell, Cazneau, Darnell, Evans, Everts, Gage, Horton, Irion, Jewett, Mayfield, Navarro, Tarrant and Wright—16.

Noes—Messrs Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Henderson, Hicks, Howard, Holland, Hunter, Latimer of L., Lewis, Love, Lumpkin, Lusk, Lipscomb, Mc'Gowan, M'Neil, Parker, Rains, Runnels, Scott, Smyth, Standefer, Ochiltree, White and Young—29.

So the motion was lost.

On motion of Mr. Lewis, the report of the committee on education was taken up.

Mr. Mayfield offered the following amendment as an addition to the 3d section:

And all lands which may hereafter be declared vacant, either by the courts of this state, the federal or supreme courts of the United States, lying either within the limits of any colonization contracts as specified in the same, after applying the procceeds thereof to the payment of the debts and liabilities for money or land of the Republic of Texas as the legislature may direct, the one half the residue thereof shall be applied to the support and maintenance of free common schools. reserving at all times to the contractor his just quantum of premium lands, and to the actual settler the full quantity to which he may be justly entitled.

Mr. Evans moved to strike out that portion applying the proceeds to the payment of the debts and liabilities of the Republic of Texas.

Which motion was lost.

Mr. Young moved to strike out that portion reserving to the contractors their premium lands.

Lost.

The ayes and noes were then called on the adoption of Mr. Mayfield's amendment, and stood thus:

Ayes—Messrs. Armstrong of R., Baylor, Caldwell, Cazneau, Clark, Evans, Everts, Horton, Hunter, Jewett, Lewis, Mayfield, McGowan, Tarrant and White—15.

Noes—Messrs. President, Bache, Bagby, Brashear, Burroughs, Cunningham, Cuney, Gage, Hicks, Hogg, Irion, Latimer of L., Latimer of R. R., Love, Lumpkin, Lipscomb, McNeil, Navarro, Parker, Power, Rains, Scott, Smyth, Standefer, Ochiltree, Wright and Young—27.

So the amendment was rejected.

Mr. Young moved the previous question.

Which motion prevailed.

The main question being the adoption of the 3d section of the report of the committee on education was carried, and the section adopted.

On motion, the report was ordered to be engrossed.

Leave of absence was granted to Messrs. Everts and Howard for the remainder of the session.

On motion of Mr. Young, the schedule was taken up.

Mr. Ochiltree moved to fill the blank in the 1st section with the words "time of the adoption of this constitution by the Congress of the United States."

On motion of Mr. Mayfield, the Convention adjourned until half past 8 o'clock, Monday morning.

Monday morning, August 25, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

The special committee (W. B Ochiltree chairman) appointed to supervise and make grammatical and other corrections to the different articles of the constitution, reported corrections upon the General Provisions; Education, Slaves and Impeachment.

Mr. Standifer offered the following additional section to the General Provisions, to come in between 23d and 24th sections:

The salaries of the Governor and the Judges of the supreme and district courts are hereby fixed at the minimum established in the constitution, and shall not be increased for ten years.

On motion of Mr. Hogg, the rule was suspended and the additional section adopted as one of the sections of the General Provisions.

On motion of Mr. Horton, the chairman on printing was authorized to employ George Fisher for the purpose of translating into the Spanish language the constitution of the state, at two dollars per page.

On motion of Mr. Young, the report of the revising committee was taken up, and the various corrections to the General Provisions and Education, were adopted by the convention.

On motion of Mr. Anderson, the General Provisions were read section by section.

Mr. Cunningham moved to strike out the 19th section, providing that "all property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property," &c.

Mr. Latimer, of Lamar, seconded the motion to strike out, expressing in forcible language his objections to the section.

The convention refused to strike out.

Mr. Forbes moved to strike out the 22d section.

Lost.

Mr. Forbes moved to strike out the last clause of the 24th section.

Lost.

Mr. Gage moved to strike out the whole of the 24th section.

Lost.

Mr. Hemphill from the Judiciary committee, reported the following as an additional section to the General Provisions, to come in after the 21st section:

All titles to land, granted by the government of Spain or Mexico, or of Coahuila and Texas, under the colonization laws, or otherwise, lying within the limits of Texas, and which shall not be recorded or filed for record in the recorder's office of the respective counties in which said land lies, within one year from the meeting of the first legislature under this constitution, shall be forever barred and be considered vacant; provided that the titles to land of minor heirs and femes covert may be exempted from the provisions of this article, in such manner as the legislature may direct.

Mr. Anderson objected to it on the ground that it would injure those who had acquired title by prescription.

Mr. Caldwell made some remarks, objecting to the section on the same ground, and concluded as follows:

Pass that resolution, and it will be understood that occupancy is worth nothing, and that registration is all, I venture to assert, that unless we go to our constitution and inform them of it, man by man, four fifths of them will not place their original titles upon record. They will say that they have not the three dollars necessary to put their titles upon record. It is not required in the United States, or under the laws of Mexico. I admit that it would be a good plan for persons to go and put their titles on record; and we may give an advantage by this which will induce them to do so. But let us not vacate the titles of citizens for not doing it.

Mr. *Love* said: Whilst I approve of the object, I think there are some difficulties connected with the subject. I know that many original titles belonging to Coahuila and Texas, are now in Mexico, and the titles to many grants issued by the King of Spain cannot be arrived at. This matter should be well understood before any action of this kind is taken. I think it should be re referred to the judiciary committee.

Mr Navarro as interpreted by Geo. Fisher Esq. spoke as follows:
I [illegible]

Galveston upon this subject. And I will state in addition, that this article is entirely impracticable, as well as absolutely monstrous and absurd. There are a great many Mexican citizens, who were formerly inhabitants of Texas, having lived upon the Nueces, at Goliad, Bexar, and at various points in the present Republic of Texas, at that time in states composing a part of the Mexican confederacy. Some of them left of their own accord; some were forced away by the army of Texas, and others were compelled by the armies of Mexico to go beyond the Rio Grande. Some of them carried their titles with them: and some of the archives of Bexar, Goliad, and San Patricio, were carried beyond the Rio Grande. Some who have titles to lands embraced in the present limits of Texas, were never inhabitants of Texas. There are some persons owning lands by virtue of grants made by the King of Spain, and by the authorities of Tamaulipas, Coahuila and Texas. Many of them have never come to Texas, but these grants are in their possession. Is it now reasonable that these men should be compelled, within one year after the assembling of the first Legislature, to rescind these titles? Are they bound to do it? Are these laws and this Constitution binding upon persons who have never been inhabitants of the country, or those who obtained their titles to property previously to the formation of this Constitution and that of the Republic? Further: this Convention, by accepting the resolutions of the United States' Congress, in the name of the people of Texas, on the 4th day of July, has solemnly agreed to submit the settlement of the boundary question entirely to the government of the United States. Now, I ask, is it for a moment reasonable to suppose that the Mexican government, in adjudicating her difficulties and settling the question of limits with the government of the United States, will not insist upon it as a condition *sine qua non*, that all the grants, rights, privileges, and prerogatives of these Mexican citizens shall be respected and confirmed? Is it a reasonable supposition that these men, who never were in Texas, are to lose their rights? And is not the Mexican government in duty bound to sustain and support the claims of her citizens, not only of those who were previously citizens of Texas, and left the country, making common cause with her, but even of those who never were in Texas, and have titles to lands here in their possession? In my opinion, clearly their right will be insisted upon by the Mexican government, and the United States cannot get over it. In case the Mexican government shall claim some two, three, four or five hundred men as citizens, then owing allegiance to that country, and who at the time of the final settlement of this matter, may perhaps think proper to immigrate to Texas, because their interest and their lands are here, and could not do so previously, because they might be compelled to emigrate from Texas, is it reasonable to suppose that the United States' government will not accede to it? If then this claim shall be insisted upon by the government of Mexico, will it not be incumbent upon the government of the United States to accede to it? What then will a clause like this ammount to in the Constitution? And if this Constitution with that clause is presented for the ratification or acceptance of the Congress of the United States, and this question arises, will not that Congress, in all probability, return it as inadmissible, as not carrying out the resolutions which we have previously agreed to? I believe there is not an honorable member of this Convention, who, if he will put the question to himself, and consult his own conscience, will not see at once that this article is not unreasonable and impracticable in effect, but to all intents and purposes contrary to justice and equity, and such as no man can conscientiously vote for. I appeal to the honorable feelings of gentlemen of this Convention, to take this matter into serious consideration, before they adopt a provision of this kind.

Mr Cunningham offered the following as a substitute for the one offered by the committee:

The Legislature shall have power to pass laws requiring all persons having a title to lands derived from the government of Spain, Mexico, or that of the State of Coahuila and Texas, or any other state or authority, to register the same within a reasonable time, in the county in which the lands lie, under penalty of the forfeiture of the same.

On motion of Mr. Hemphill, the additional section reported and the substitute were referred to the committee on the judiciary.

On motion of Mr. Lewis, Mr. Cunningham was added to the committee on the judiciary.

Mr. Forbes offered the following amendment to the 30th section:

And all corporate bodies, heretofore vested with banking or discounting privileges, either by the laws of Coahuila and Texas or of the Republic of Texas, are hereby declared null and void.

Mr. Mayfield moved to amend by adding to the end of the section "that all colonization contracts entered into with the Secretary of State or President, be declared null and void.

Mr. Young moved the previous question.

The question—shall the main question be now taken? was put and carried.

The main question being the passage of the article on the General Provisions,

The ayes and noes were called, and stood as follows;

Ayes—Messrs. President, Anderson, Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Clark, Cuney, Darnell, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jones, Jewett, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Rains, Runnels, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—43.

Noes—Messrs Caldwell, Cazneau, Cunningham, Evans, Forbes, Hunter, Mayfield, and White—9.

So the article passed.

On motion of Mr. Ochiltree, the Schedule was taken up; and,

On motion of Mr. Henderson, the first blank was filled with the words "organization of the state government."

On motion, all the blanks in the second section were filled with the same words.

Mr Forbes offered the following as an additional section:

All corporate bodies with banking or discounting privileges, having been prohibited by this Constitution, all persons or corporate bodies vested with banking or discounting privileges by the laws of Coahuila and Texas, or the Republic of Texas, are hereby prohibited from the exercise or use of such banking or discounting privileges.

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs Bagby, Baylor, Brashear, Clark, Evans, Forbes, Gage, Hunter, Jewett Latimer of L, Latimer of R R; Mayfield, Tarrant. Ochiltree, Van Zandt, White, Wright and Young—18.

Noes—Messrs. President, Anderson, Armstrong of R., Bache, Brown, Caldwell, Cunningham, Cuney, Darnell, Hemphill, Henderson Hicks, Hogg, Horton, Holland, Irion, Jones, Lewis, Love Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Navarro, Parker, Rains, Runnels, Scott, Smyth, and Standefer—32.

Rejected.

Mr. Mayfield offered the following as an additional section:

All agencies for the colonization or settlement of any of the vacant or unappropriated lands of Texas, made and entered into with the President, or Secretary of State of Texas, or any person from and after the adoption of this Constitution by the people of Texas, are from and after that time revoked.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Armstrong of R., Baylor, Brown, Burroughs, Caldwell, Clark, Evans, Hunter, Jewett. Lumpkin, Mayfield McNeil, Runnels, Scott, Tarrant, Van Zandt, White and Wright—18

Noes—Messrs. President, Anderson, Bagby. Bache. Cazneau. Cunningham, Cuney, Darnell, Forbes, Hemphill, Henderson, Hicks, Hogg, Horton, Holland, Irion, Jones, Latimer of L., Latimer of R. R., Lewis, Lusk, Lipscomb, McGowan, Miller, Navarro, Parker, Rains, Smyth, Standefer, Ochiltree and Young—31.

So the additional section was rejected

The 3d section was taken up and the amendment of the committee on the judiciary, to wit: between the words "repugnant" and "to," in the 2d line, insert "to the Constitution of the United States, the joint resolution for annexing Texas to the United States or."

Adopted.

The section as amended was then adopted.

Mr. Love offered the following as an amendment to the 4th section:

Every person now subject to any fine, penalty or forfeiture for the commission of any political offence against the Republic of Texas, shall be and are hereby released, discharged and acquitted from all liability arising from such offence, under any law now in force, and are hereby restored to all the rights and privileges of which they have not been divested by the judgment of a judicial tribunal having competent jurisdiction.

Mr. Lipscomb offered the following amendment to the amendment offered by Mr. Love, which was accepted:

On this condition, however, that all such offenders shall take the oath of allegiance to support the Constitution of this State and of the United States within twelve months after the acceptance of this Constitution by the Congress of the United States.

Mr. Bagby moved the previous question.

The question—shall the main question be now taken?, was put and carried.

The main question was the adoption of the original section, which question prevailed.

Mr. Henderson offered the following as additional sections to the Schedule, to come in after the 4th section:

Sec 5 Immediately after the adjournment of this Convention, the President of this Republic shall issue his proclamation directing the chief justices of the several counties of this Republic, and the several chief justices and their associates are hereby required to cause polls to be opened in their several counties at the established precincts, on the second Monday of October next, for the purpose of taking the sense of the people of Texas in regard to the adoption or rejection of this Constitution, and the votes of all persons entitled to vote under the existing laws or this Constitution, shall be received. Each voter shall express his opinion by depositing in the ballot box a ticket whereon shall be written "the Constitution accepted," "or the Constitution rejected," or some words clearly expressing the intention of the voter. The election shall be conducted in conformity with the existing laws regulating elections, and the chief justices of the several counties shall carefully and promptly make returns of said polls to the Department of State of this Republic.

Sec 6. Upon the receipt of the said returns, or on the first Monday of November next, if the returns be not sooner made, it shall be the duty of the President, in presence of such officers of his cabinet as may be present, and of all persons who may choose to attend, to compare the votes given for the ratification or rejection of this Constitution: and if it shall appear from the returns that a majority of all the votes given is for the adoption of the Constitution, then it shall be the duty of the President to make proclamation of that fact, and thenceforth this constitution shall be ordained and established as the Constitution of this State, to go into operation and be of force and effect, on the acceptance of the same by the Congress of the United States. and the President of this Republic is authorized and required to transmit to the President of the United States, so as to be received early in December next, the said Constitution, certifying under the great seal of the Republic the number of votes given at the polls for the rejection or adoption of the Constitution, and the majority of the votes given for its ratification.

Sec. 7. Should this Constitution be accepted by the people of Texas, it shall be the duty of the President, on or before the first Monday in November next, to issue his proclamation, directing and requiring elections to be holden in all the counties of this Republic, on the first Monday in December next for the offices of Governor Lieutenant Governor, members of the Senate and House of Representatives of the State Legislature, in accordance with the apportionment of representation directed by this Constitution; and also for members of the House of Representatives of the Congress of the United States; and returns for the members of the Legislature of this State shall be made to the Department of State of this Republic and those for that of Governor and Lieutenant Governor shall be addressed to the Speaker of the House of Representatives, endorsed "Election returns of ——— county for Governor," and directed to the Department of State, and should, from any cause whatever, the chief justices of counties fail to cause to be holden any of the polls or elections provided for by this Constitution, at the times and places herein directed, the people of the precinct where such failure exists, are hereby authorized to choose managers, judges and other officers to conduct said elections.

Sec 8. Immediately on the President of this Republic receiving official information of the acceptance of this Constitution by the Congress of the United States, he shall issue his proclamation convening at an early day the Legislature of the State of Texas at the seat of government established under this Constitution, and after the said legislature shall have organized the Speaker of the House of Representatives shall, in presence of both branches of the Legislature, open the returns of the election for Governor and Lieutenant Governor, count and compare the votes, and declare the names of the persons who shall be elected to the office of Governor and that of Lieutenant Governor, who shall forthwith be installed in their respective offices, and the Legislature shall proceed, as early as practicable, to elect Senators to represent this State in the Senate of the of the United States.

Sec. 9. It shall be the duty of the President of Texas, immediately after the inauguration of the Governor, to deliver to him all records, public money, documents, archives and public property of every description whatsoever, under the control of the Executive branch of the government, and the Governor shall dispose of the same in such manner as the Legislature may direct.

Sec. 10. That no inconvenience may result from the taking effect of this Constitution, it is declared that the laws of the Republic, relative to the duties of officers, both civil and military of the same, shall remain in full force, though contrary to this Constitution, and the duties of their several offices shall be performed in conformity with the existing laws, until the organization of the government of the State under this Constitution. That the offices of President, Vice President, of the President's Cabinet, Foreign Ministers, Chargés and agents and others repugnant to this Constitution shall be superceded by the same, and that all others shall be holden and exercised until they expire by their own limitation, or be superseded by the authority of this Constitution, or laws made in pursuance thereof

Sec. 11 The first general election for Governor, Lieutenant Governor and members of the Legislature, after the organization of the government, shall take place on the first Monday in November, 1847, and shall be held biennially thereafter, on the first Monday in November, and the Governor and Lieutenant Governor elected in December next, shall hold their offices until the installation in office of the Governor and Lieutenant Governor to be elected in 1847.

Mr. Caldwell moved to lay the additional sections on the table. Lost.

Mr. Mayfield moved to have 100 copies of the additional sections printed. Lost.

On motion of Mr. Rusk, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.
Roll called—Quorum present.

Mr. Scott moved that Mr. C. B. Stewart be allowed to take his seat in the Convention, as deputy from the county of Montgomery.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs President, Anderson, Bagby, Baylor, Bache, Brashear, Cuney, Darnell, Evans, Forbes, Hemphill, Horton, Holland, Jones, Latimer of L, Lipscomb, McGowan, McNeil, Miller, Navarro, Rains, Scott and Young—23.

Noes—Messrs. Armstrong of R., Cazneau, Clark, Cunningham, Gage, Henderson, Hicks, Hogg, Hunter, Irion, Jewett, Latimer of R. R., Lumpkin, Lusk, Mayfield, Parker, Smyth, Standefer, Ochiltree and White—20

So Mr. Stewart was permitted to take his seat.

Mr. Mayfield moved to declare the Seat of Sam Houston vacant.

The ayes and noes thereon were called, and stood as follows:

Ayes—Messrs Anderson, Baylor, Bache, Bagby, Caldwell, Cazneau, Cuney, Evans, Forbes, Hemphill, Horton, Jones, Lipscomb, McGowan, McNeill, Miller, Navarro, Scott and Smyth—19.

Noes—Messrs. President, Armstrong of R., Clark, Cunningham, Darnell, Gage, Henderson, Hicks, Hogg, Holland, Hunter, Irion, Jewett, Latimer of L, Latimer of R R., Lumpkin, Lusk, Mayfield, Parker, Rains, Standefer, Tarrant, Ochiltree, Van Zandt, White and Young—26.

Lost.

On motion of Mr. Young, the Schedule was taken up.

The additional sections offered by Mr Henderson being before the Convention, Mr. Forbes moved to have them read. Lost.

Mr. Rusk offered the following amendment to the 1st section:

"And at the same time the vote shall be taken for and against annexation."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs President, Anderson, Armstrong of R, Baylor, Brown, Caldwell, Cazneau, Cunningham, Cuney, Darnell, Evans, Forbes, Gage, Hogg, Horton, Stewart, Holland, Hunter, Irion, Jewett, Jones, Lewis, Lumpkin, Lipscomb, Mayfield, McGowan, Miller, Navarro, Parker, Runnels, Scott, Standefer Tarrant, Ochiltree, White and Wright—36.

Noes—Messrs. Bache, Bagby, Brashear, Burroughs, Clark, Hemphill, Henderson, Hicks, Latimer of L, Latimer of R. R., Lusk, McNeil, Rains, Smyth, Van Zandt and Young—16.

Motion carried.

Mr. Rusk moved to have the additional sections offered by Mr. Henderson, read section by section.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Anderson, Baylor, Brown, Caldwell, Cazneau, Darnell, Evans, Forbes, Gage, Henderson, Hogg, Horton, Stewart, Holland, Hunter, Jewett, Jones, Lipscomb, Mayfield, McGowan, Navarro, Parker, Runnels, Scott, Smyth, Standefer, Tarrant and White—29.

Noes—Messrs. Armstrong of R., Bagby, Bache, Brashear, Burroughs, Clark, Cunningham, Cuney, Hemphill, Hicks, Irion, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McNeil, Miller, Rains, Ochiltree, Van Zandt, Wright and Young—23.

So the motion prevailed.

Mr. Rusk moved to strike out "ballot" and insert "*viva voce*," in regard to voting for or against the Constitution, &c. Carried.

Mr. Rusk moved to strike out the word "second," before the words "Monday in October," and insert "first."

Upon which the ayes and noes were called and stood as follows:

Ayes—Messrs President, Anderson, Baylor, Brown. Caldwell, Cazneau, Darnell, Forbes, Gage, Hogg, Horton, Stewart, Holland, Hunter. Jewett, Jones, Lumpkin, Mayfield, Navarro, Parker, Runnels, Standefer, Tarrant and White—24.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Cuney, Evans, Hemphill Henderson, Hicks, Irion, Latimer of L, Latimer of R. R., Lewis, Lusk, Lipscomb, McGowan, McNeil, Miller, Rains, Scott, Smyth, Ochiltree, Van Zandt, Wright and Young—28.

So the motion was lost.

The 5th section was then adopted.

Mr. Henderson moved to strike out the word "first," before "Monday in November" and insert the word "second."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Armstrong of R., Bache, Bagby, Brashear. Burroughs, Clark, Cunningham, Cuney, Evans, Hemphill, Henderson, Hicks, Horton, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb. McNeil. Miller. Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, and Young—34.

Noes—Messrs. President, Anderson, Baylor, Brown, Caldwell, Cazneau, Darnell, Forbes, Gage, Hogg, Stewart, Hunter, Mayfield, McGowan, Navarro, Runnels, White and Wright—18.

So the motion prevailed.

Mr. Mayfield offered the following amendment:

Insert, after "United States," in 15th line, 6th section, the words "in duplicate, one by a special messenger, and one through the mail."

Mr. Henderson offered the following amendment:

Strike out the words "on the acceptance of the same by the Congress of the United States," and insert "from and after the organization of the state government under this Constitution," in the 12th and 13th lines of the 6th section.

Adopted; and section as amended adopted.

Mr. Rusk moved to strike out "members of the House of Representatives of the United States' Congress," in section 7th. Adopted.

Mr. Brown moved to strike out the 3d section. Lost.

Mr. Henderson moved to strike out "first" before Monday in December," and insert "second." Carried.

Mr. Caldwell moved to adjourn until 8 o'clock, to-morrow morning. Lost.

Mr Mayfield moved to strike out the words "the President shall issue his proclamation," and insert "the chief justice shall order an election."

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Caldwell, Cazneau, Gage, Hogg, Horton, Holland, Hunter, Mayfield, Runnels and White—11.

Noes—Messrs. Armstrong of R., Baylor, Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Hemphill, Henderson, Hicks, Stewart, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis. Lumpkin, Lusk, Lipscomb, McGowan, McNeill, Miller, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young,—39.

Lost.

Mr. Henderson moved to strike out "first" before "Monday in December," and insert "third."

Mr. Mayfield moved to amend by inserting "that Secretary of State, Attorney General, &c., shall not receive any more pay than similar officers of the state government."

Upon which the ayes and noes were called, and are as follows:

Ayes—Messrs. Caldwell, Gage and Mayfield—3.

Noes—Messrs. President, Armstrong of R., Baylor, Bache, Bagby, Brashear, Brown, Burroughs, Cazneau, Clark, Cunningham, Cuney, Darnell, Evans, Hemphill, Henderson, Hicks, Hogg, Horton, Stewart, Holland, Hunter, Irion, Jewett. Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Navarro, Parker, Rains, Runnels. Scott, Smyth, Standefer, Tarrant, Van Zandt, White, Wright and Young—46.

So the motion was lost.

The question was then taken on the amendment of Mr. Henderson, to strike out "first Monday."

Which was carried.

On motion of Mr. Henderson, the word "Ordinance" was stricken out and "Constitution" inserted.

Mr. Caldwell moved to insert "all goods, wares and merchandize imported from the United States, being the manufacture of the same, after the acceptance of this Constitution by the Congress of the United States, shall be imported free from duty."

Mr. Lipscomb moved the previous question, which was carried by ayes and noes, as follows:

Ayes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans. Forbes, Hemphill, Henderson, Hicks. Stewart. Holland, Irion, Latimer of L., Latimer of R R. Lewis, Lumpkin, Lusk, Lipscomb. McGowan. McNeil, Miller, Rains. Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—36.

Noes—Messrs President, Baylor, Brown, Caldwell, Cazneau, Gage, Hogg. Horton Hunter, Jones, Love, Mayfield, Navarro, Parker, Runnels and White—16

The main question being the adoption of the section as amended, was put and carried.

Mr Rusk offered the following as an addition to the 8th section:

The Legislature shall also adopt such measures as may be required to cede to the United States at the proper time, all public edifices. fortifications, barracks, ports, harbors navy, navy yards, docks, magazines, arms and armaments, and all other property and means pertaining to the public defence, now belonging to the Republic of Texas. and to make the necessary preparations for transferring to the said U States, all custom houses and other places for the collection of impost duties, and other foreign duties.

Which was adopted.

Mr Runnels moved to amend the 8th section, so as to provide for the election of Representatives to the United States' Congress as well as Senators.

Which amendment was adopted.

Mr. Rusk moved to adjourn until to morrow morning, 8 o'clock. Lost.

Mr Mayfield gave notice that he would take this opportunity to give his views in full upon the merits of the Ordinance; and

On motion of Mr. Latimer of L., the Convention adjourned until 8 o'clock, to morrow morning.

Tuesday morning, Aug. 26, 1845.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Anderson gave written notice that he would move a re-consideration of the vote adopting a section of the General Provisions, providing for amending the Constitution.

Mr. Caldwell, from a special committee, made the following report:

Committee Room, Aug. 26, 1845.

To the Honorable THOS. J. RUSK,
President of the Convention:

The committee, to whom was referred the case of Post Captain E. W. Moore, for want of time having been unable to examine into the subject matter referred to them, they therefore express no opinion upon the merits of the case, but recommend the passage of the following resolution:

JOHN CALDWELL, Chairman.

Resolved, By the Delegates of the people in Convention assembled, That in closing their labors as the representatives of the people, they are constrained by a sense of duty to their country and their gallant fellow citizen E. W Moore to recommend him to the favorable consideration of the American government, and that he may be retained and provided for in the naval service thereof.

On motion, the rule was suspended.

Mr. Van Zandt offered the following amendment to the resolution:

Strike out after the word "they" in the 3d line, down to the word "that" in 7th line, and insert "respectfully recommend to the favorable consideration of the American government, their gallant fellow citizen Post Captain E. W. Moore, and request that he."

Which amendment was adopted.

The resolution as amended was then adopted, and reads as follows:

Resolved, By the Delegates of the people in Convention assembled, That in closing their labors as the representatives of the people, they respectfully recommend to the favorable consideration of the American government, their gallant fellow citizen Post Captain E W. Moore, and request that he may be retained and provided for in the naval service thereof."

Mr. Ochiltree offered the following resolution:

Resolved, That the officers of the Convention be entitled to receive the same pay as allowed the officers of the House of Representatives of the 9th Congress.

Which was laid on the table one day for consideration.

Mr Bache offered the following resolution:

Resolved, That the President of the Convention be authorized to draw his warrant upon the Secretary of the Treasury of the Republic of Texas, for ———— dollars, in favor of J. D McLeod, as compensation for extra services as Post Master of Austin, during the session of the Convention.

Which was laid on the table one day for consideration.

Mr. Henderson offered the following resolution:

Be it resolved, That the Secretary of this Convention be instructed to draw from the Treasurer the pay allowed by the Convention to J. W. Oliver, of Sabine county, and that he be further instructed to pay over the same to the Hon. J. M. Burroughs, for the use of the said Oliver.'

Which was laid on the table one day for consideration.

On motion of Mr. Ochiltree, the Convention took up the

ORDERS OF THE DAY.

The additional section, as offered by Mr. Henderson to the 8th section of the Schedule, being first in order, was taken up and adopted.

Section 9th adopted.

In section 10th, Mr. Henderson moved to amend, by striking out the words "taking effect of this Constitution," and insert "from the change of the government."

Which was carried.

In same section, on motion of Mr. Henderson, the words "though contrary to this Constitution," were stricken out.

The section was then read as amended.

Mr. *Caldwell* said: That strikes me as very strange. It seems to hang with tenacity to the President and Foreign Ministers, and to contemplate that they shall retain their offices until the organization of the state government. Suppose that our Constitution is adopted on the first Monday in December, how can the President possibly exercise his functions as the head of a separate and distinct government, and what would Foreign Ministers be doing? How can we have a President drawing his salary, a Secretary of State and a Secretary of the Treasury, and Foreign Ministers, being at the same time a part of the United States? I cannot conceive of such a state of things. In my opinion, this will have to be altered, because when our Constitution is accepted by the Congress of the United States, these functionaries must go out of office. This is a dilemma, from which I cannot see how we are to extricate ourselves.

Mr. *Henderson* said: I do not think there is any dilemma here. According to the doctrine which I advocate and believe to be the true one, we are a separate government until organized under this Constitution, after it is accepted by the United States' government. So far as regards Foreign Ministers, I hold this to be law: that neither the Legislature of Texas nor this Convention, until the Constitution is made and in force, can take away from the President, the power to send Foreign Ministers given him by the old Constitution. I am not so very suspicious of the President, however he may differ from me in the matter of annexation. I pretend not to know his opinions. I do not suppose that he would now send Ministers to England or France. So far as regards the United States, I think it necessary to have one there until our Constitution is accepted; and then, no doubt, the President will order him home.

Mr. *Caldwell* said: The gentleman from San Augustine has not reached the question at all. According to the reading of the resolution, we are absolutely and in fact a separate, independent Republic, the President having all the functions and powers that he now has after the acceptance of our Constitution. These officers are lopped off and of necessity cease to exercise their functions under the present Constitution the moment that the U. States adopts our State Constitution. As for suspicion, the *President* may be the strongest annexation man in the Republic. That does not remove the objection. I am speaking of the difficulty this resolution, if adopted, will place us in, at the time of and after our acceptance by the United States' Congress. It proposes that these officers shall go on and exercise their functions under the old Constitution, and be acting at the same time in subordination to the Constitution of the United States.

Mr. *Henderson* said: The expression is, that this Constitution shall go into full force and effect "from and after the organization of the state government under the Constitution," not from the acceptance by the Congress of the United States. The whole harmonizes. It presents no difficulties to my own mind.

Mr. *Cunningham* said: It seems to me that there is something uncertain about the date when this Constitution is to take effect. I think it would be better to say "from and after the organization of the first State Legislature." The different branches of the government will not all be organized upon the same day.

Mr *Hemphill* said: Perhaps the amendment of the gentleman from Victoria would render more certain the period of the commencement of the State government, and should therefore be adopted.

Allow me while on the floor to reply with brevity to some of the arguments of gentlemen in opposition to the additional sections proposed.

It has been contended that we could not be admitted into the Union until the State government was in complete operation, and that after the ratification of this Constitution by the people, the Republic could not, without violating the terms and spirit of the overture for annexation, exercise the powers and maintain the jurisdiction of a separate, distinct and independent sovereignty. The argument in my opinion is founded upon a want of due consideration as well of the circumstances of our situation, as of the facts connected with the *establishment* and *operation* of the Constitution of the United States, and of various States; and also upon a misconception of the true character of the constitutional compacts and the rights of the several parties to the Union.

Our condition is in some respects materially different from that of the original thirteen States previous to the formation of the Constitution of the United States. Much more is it in contrast with the situation of a Territory previous to its admission as a State. A Territory is but a corporation, a creature of the government of the United States, dependent upon it for existence, supported out of its treasury, governed by its will, and whose officers are appointed, and whose laws may be revised by the authorities of the Federal government. When admitted, it acquires powers and rights not before possessed. We on the contrary, do not receive, but relinquish several of the powers of sovereignty. During the whole period of the transmutation of a territory and its elevation to the dignity and powers of a sovereign State, the laws and jurisdiction of the United States are in active operation within the limits of the said territory. There is no hiatus in the powers of government. All the laws necessary for the preservation of order, the maintenance of tranquility, the support of the foreign as well as domestic relations of the community, the continuance of established institutions, and the enjoyment of all rights, civil, political, social and domestic are enforced, either by the territorial government or by that of the Union. Far different is our situation. The jurisdiction and laws of the United States cannot be extended over this country without additional legislation by the Congress of the U. States. All the mass of powers belonging to the government of the United States must be enforced by the government of the Republic, or not at all. If we cannot exert the faculties of an independent State, the Post Office establishment must cease. No Tariff could be collected. There is no officer or authority to collect that of the United States, and if we were a Territory, or even a State, we would be stripped of the mighty power of indirect taxation. All the exclusive rights and powers of the general government, the protection which it owes the citizen, and which are all now exerted and afforded by our present government would be in abeyance if the argument in favor of the immediate formation of a State government should prevail. The crimes punishable by the government of the United States, are not cognizable as offences against a State, and might be perpetrated here without check from any lawful authority. All the powers of sovereignty may be required and should be capable of exercise to promote the welfare of the community, and secure the safety of the State; and I cannot believe that we would be justified in overturning the present government, or stripping it of its powers and erecting one, which by its very Constitution must be incapable of enforcing several of the rights of sovereignty, and of accomplishing some of the most necessary and beneficial objects of government.

The argument that the Constitution cannot be ratified and established without going into immediate operation, is altogether untenable. Many Constitutions have been framed on this continent within the last seventy years;—and they have generally, if not invariably been ratified and established some time previous to their active operative effect.

The seventh article of the Constitution of the United States provides that the ratification of the Conventions of nine States shall be sufficient for the *establishment* of that Constitution between the States so ratifying the same. Now although the Constitution of the U. States was established on the ratification of nine States, we know from history that it had no active force until several months after that event. The ratification of the State of New Hampshire was the ninth. This was on June 21st, 1788; and was transmitted to the Congress assembled under the Articles of Confederation. This body debated for two months before they adopted an act for putting the Constitution into operation. By that act provision was made for the election of a President; and the 4th of March, 1789, was appointed as the time for commencing proceedings under the said Constitution. Thus although this Constitution was *established* on the 21st June, 1788, yet it did not go into operation until the 4th March, 1789. The government under the old Articles of Confederation was during this interval still in force. During that period the State of Virginia passed a law impairing the obligation of a contract; but the Supreme Court of the U. States decided that the law was not affected by the Constitution, because that instrument, though established on the ratification of the ninth State, had no effect until the operations of government under the same had actually commenced. There is no incompatibility between the establishment of a new Constitution to commence at a future day, and the continuance of the old government until that time. There is nothing in the history of Constitutions which would require us hastily to subvert the present government, because a new Constitution has been framed. Let us pursue the example of the United States. After the establishment of their Constitution, but during the continuance and under the direction of the old government of the confederation, a President, Senators and Representatives were chosen, and at the period prescribed for the commencement of the new government, these functionaries were at once prepared to discharge their official functions. Let us in the same manner elect the Governor and the members of the State Legislature, to be ready for the organization of the State government at an early period after the acceptance of our Constitution by the Congress of the United States. We cannot with any propriety, and with a due regard to the preservation of the country from anarchy and confusion, proceed a step further. We are still an independent Republic, and the Union will not be complete until official notice of the acceptance of our Constitution has been received.

So far is it from being true in principle that, we cannot be admitted into the Union without the previous organization of a State government, that it was not necessary that even a new Constitution should be framed and adopted. We have consented to do so by our acceptance of the proposed terms of annexation; but the proposal itself originated in misapprehension, and such a condition is not of necessity a preliminary essential to the incorporation of a State already sovereign and independent into the Federal Union.

Under the articles of confederation, the States possessed more enlarged powers than under the new Constitution. For instance they had the exclusive power of raising and collecting a revenue by Tariff laws. Again, the laws of the confederacy did not generally operate directly upon the individual citizen, but were powerless unless enforced by the States The adoption of the Constitution of the United States effected a mighty change in both the general and state governments The Union acquired and the States relinquished several sovereign powers. But no one supposed at that time, or has since maintained that new Constitutions should be formed by the States—that their situation should be adapted to this change in the powers of their governments—and that this too should be done before the Constitution and laws of the United States could be enforced in the territorial limits of the respective States. They already possessed republican forms of government. By assenting to the Constitution of the United States, all portions of the constitutions and laws of the several States repugnant thereto became in future null and inoperative.

In this respect, our situation is analogous to that of the old States. We possess all the powers of a separate and independent sovereignty, a portion of which we are now ceding to the government of the Union. We already have, as had also the old States, a written Constitution. Our form of government is, as was theirs, republican in form, substance and character. The only preliminary, then, indispensable to our admission into the Union, is that which was required of the original states, viz. our assent to the Constitution of the United States. This once given unaccompanied with any reservations, sweeps away all powers of government, and all provisions of our Constitution and laws in conflict with the Federal Constitution.

Some of the original States did not change their Constitutions for a long period after the present government of the U States went into operation. Rhode Island has not to this day even formed a Constitution, but is still governed by the Royal Charter under which the colony was established. North Carolina and Rhode Island were both admitted into the Union several months after the organization of the general government: but the first was not required to change her Constitution, nor the latter her Royal Charter. Assent to the Federal Constitution, and nothing more, was necessary.

I might go on to illustrate our situation by comparison with that of North Carolina and Rhode Island previous to their consent and ratification of the Constitution of the U States. They continued to collect their State Tariffs, and the first revenue law of the United States authorized duties to be collected of certain articles imported from North Carolina and Rhode Island into the United States But I forbear. The patience of this body has been severely tested, and I feel no inclination to press it further. Should the sections as proposed by the gentlemen from San Augustine be adopted, the situation of the country would then be well understood by all. The old laws in all their force—the old government with all its attributes would continue until the United States were prepared to exercise their portion of the powers of government.

and we were ready to place ourselves under the control of new laws, Constitution and authorities. There would be but one change of government. All persons, even those of the most humble intellect, would understand the powers as well of the old as of the new governments, and the time and extent of the change which would be effected. Should, however, a provisional government be adopted, its powers would be ill-defined, and might be resisted. The rights, obligations and duties of the citizens and of the government would be uncertain, liable to great misapprehension, and might involve us in all the worst consequences of confusion, discord and anarchy.

Mr. *Mayfield* said: All the principles stated by the gentleman from Washington may be correct: but it does not follow that there is no other mode than the one he advocates whereby we can, without infringing upon State rights, or the principles of international law, obtain admission into the American Union. There is a marked difference between the position of the State of North Carolina and others mentioned, and ours under the plan proposed by the majority upon this floor. Their governments, sir, were organized upon an economical, plain, republican and cheap system. They had not the enormous taxation which this plan supposes. This scheme proposes to continue a system which has borne down the people for years; it proposes to keep up a host of extravagant officers required neither by propriety and necessity. Your President is to have his salary of 5,000 dollars; your Secretaries, your Attorney General, your Judges, your Custom House Collectors, your revenue officers of every description are to be daily and monthly drawing from the treasury their enormous salaries; and this is to continue for six, eight, and perhaps for twelve months; yes, sir, if the President choose, under the terms of that proposition, until the expiration of his term of office. Foreign ministers are still to be supported, with salaries which will enable them to revel in the luxuries of foreign courts, and interchange civilities with noblemen and great men. This is the difference in the operation of the two plans. By our own system we propose immediately to organize the State government, and thus to reduce the number of officers, and to substitute a cheap government in the place of an expensive one. We propose to reduce the expenditures of the government from 150 to 200,000 dollars per annum to support a host of mercenaries and vampyres in office, down to about 50.000 dollars per annum. This is a grand difference, and it is the duty of this Convention to look to it. If a plan can be devised by which, without violence to any great principles, or to the spirit of the annexation resolutions, we can provide for a more speedy admission into the Union, and relieve the people of the enormous expenses attendant upon the present system, by all means let us adopt it. Are we not called upon to devise such a plan? And are gentlemen prepared to say that such a plan cannot be formed? I think not, sir. I call upon them to take a little time to reflect upon this subject; and I trust that such a mode will be adopted as will secure all these objects."

On motion of Mr. Hemphill, the words "or until the first day of the meeting of the Legislature," were also added.

Mr. Hicks moved the previous question, which was carried.

The main question was the adoption of the section as amended.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. Anderson, Armstrong of R. Baylor, Bagby, Brashear, Clark, Cunningham, Cuney, Darnell, Evans Forbes, Hemphill, Henderson, Hicks, Horton, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R. Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Scott Smyth, Standefer, Stewart, Tarrant, Ochiltree, Van Zandt, White and Young—40.

Noes—Messrs. President, Caldwell, Cazneau, Gage, Hogg, Mayfield and Runnels—7.

So the section as amended was adopted.

Mr. Anderson offered the following as an additional section, to come in before the 11th section.

In case of any inability on the part of the President of the Republic of Texas to act as herein required, it shall be the duty of the Secretary of State of the Republic of Texas, and in case of disability on the part of the Secretary of State, then it shall be the duty of the Attorney General of the Republic of Texas to perform the duties assigned to the President.

Which was adopted.

Mr. Mayfield offered the following as an additional section, to come in before the last section:

"No impost duties or tariff shall be collected by the authorities of Texas, upon any goods, wares or merchandize imported into Texas from and after the final action of the United States Congress on this Constitution."

The ayes and noes were called for.

Mr. *Runnels* said: As I have not been very troublesome to the Convention, I will briefly state my reason for the vote I shall give. The object of the section appears to be to relieve the country from the bur-

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ter, Jones, Love, Lusk, Mayfield, Parker, Runnels, Scott, and White, —21.

So the previous question was ordered.

The main question being the engrossment of the schedule,

The ayes and noes were called, and stood as follows:

Ayes—Messrs Armstrong of R., Bagby, Baylor, Bache, Brashear, Brown, Burroughs, Clark Cunningham, Carey, Darnell, Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L. Latimer of R. R. Lewis. Lumpkin. Lipscomb, McGowan, McNeil. Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, VanZandt, Wright and Young—39.

Noes—Messrs President, Anderson, Caldwell, Cazneau, Gage, Hogg, Horton, Hunter, Love, Lusk, Mayfield, Runnels, and White —13.

So the schedule was ordered to be engrossed.

Mr. Darnell moved a reconsideration of the vote just taken, ordering the engrossment of the schedule.

Mr. Darnell moved to lay his motion on the table.

Lost.

The question was taken on the motion of Mr. Darnell to reconsider.

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs President, Anderson, Baylor, Bache, Brown, Caldwell, Cazneau, Cunningham, Darnell, Gage, Hogg, Horton, Love, Mayfield, Runnels, and White—16.

Noes—Messrs Armstrong of R. Bagby, Brashear, Burroughs, Clark Carey. Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Hunter, Irion. Jewett, Jones, Latimer of L. Latimer of R. R. Lewis, Lumpkin. Lusk, Lipscomb, McGowan, McNeil, Navarro, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—36.

So the Convention refused to consider.

On motion of Mr. Van Zandt, the schedule was referred to the revising committee.

On motion of Mr. Hemphill, the Convention took up the report of the committee on the judiciary, on the subject of fraudulent land claims.

Mr. Hemphill offered the following as a substitute to the 2d section of the original report:

"The District Courts shall be opened until the first day of July, 1847, for the establishment of certificates for head-rights not recommended by the Commissioners appointed under the "act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants:" and the parties suing shall produce the like proof, and be subjected to the requisitions which were necessary, and were prescribed by law to sustain the original application for the said certificates; and all certificates above referred to, not established or sued upon before the period limited, shall be barred; and the said certificate and all locations and surveys thereon, shall be forever null and void: "and all re-locations made on such surveys, shall not be disturbed until the certificates are established as above directed."

Which was adopted as a substitute.

Mr. Evans moved to lay the report on the table. Lost.

Mr. Evans then offered the following as an addition to the sections offered by the judiciary committee, on the subject of fraudulent land claims, &c.

"All grants, warrants, concessions, orders of survey, or claims to land of every degree and kind emanating or purporting to emanate from the crown or authorities of Spain, or from the authorities of Mexico; and all surveys made thereon, which were located within the twenty leagues of the border line between Texas and the United States, were "null and void.

All grants, warrants, concessions, orders of survey, or claims to land of every degree and kind, emanating or purporting to emanate from Mexico, or any of her authorities after the first day of January, 1832, and prior to the 2d day of March, 1836; and all surveys or locations made thereon, are null and void.

All grants, warrants, concessions, patents, certificates, orders of survey, or other evidence of claim or title to land, owned, belonging to or claimed by any person or persons, other than an actual and *bona fide* inhabitant of the Republic of Texas, at the day of the adoption of this Constitution by the people of Texas, saving the rights of persons to titles which emanated to them directly from the government of the Republic of Texas, and the rights of widows whose husband were, or orphan children, whose father was a citizen of the Republic of Texas at the day of his death.

In all suits by or against any holder or owner of any grant, warrant, patent, concession, order of survey, or title of any degree or kind, or by or against any assignee or representative, either claimant or defendant in his petition or answer, or other pleading verified by affidavit, may put in issue the validity of the opposing title, and may enjoin the other party to prove the authority of the officer or person issuing the claim—that the same was issued in good faith; that it was issued in conformity with law; that all the conditions were performed, and that the location and survey were legally made."

On motion of Mr. Ochiltree, Mr. Rusk was added to the revising committee.

On motion of Mr. Rusk, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

On motion of Mr. Young, the report of the committee on education was taken up, read a third time and passed.

On motion of Mr. Young, the report of the committee on the judiciary, on the subject of fraudulent land claims, &c., was taken up.

Mr. Jones offered the following as an amendment to the sections as offered by Mr. Evans:

"All grants to land heretofore located within the Republic of Texas or which shall be located previous to the adoption of this Constitution by the government of the United States, shall be null."

Which was adopted as amended.

Mr. Navarro offered the following as a substitute:

"That there may be no further difficulties in the adjudication of the validity of the titles to the grants to land, it is hereby declared that every settler who may have located his claim upon any grants heretofore made by the former governments of Spain and Mexico, shall be bound within the term of two years from the date of the adoption of this Constitution, to enclose the same with a stone wall on all sides, of eight yards in height at least. This obligation shall devolve upon his heirs and assigns, on pain in case of not complying with it, or in case of neglect to keep the said wall in constant repair, so that there never shall be a breach in it to the extent of one yard, then; and in these cases, he shall forfeit all his claim to the said land; and the grant, title or claim to the said land shall be null and void, and the said land shall be declared vacant and subject to a new location, and subject to the same conditions and penalties."

Mr. Van Zandt moved the previous question, which was carried.

The main question being the engrossment of the report of the judiciary committee,

The ayes and noes were called, and are as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bagby, Brown, Burroughs, Caldwell, Cazneau, Clark, Darnell, Evans, Hemphill, Henderson, Hicks, Hogg, Horton, Stewart, Holland, Hunter, Jewett, Jones, Latimer of L., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McNeill, Miller, Navarro, Parker, Rains, Runnels, Scott, Standefer, Tarrant, Van Zandt, White, Wright and Young—41.

Noes—Messrs. Bache, Brashear, Cuney, Forbes, Gage, Irion and McGowan—7.

So the section was ordered to be engrossed.

On motion of Mr. Jewett, the rule was suspended, the section read a third time and passed.

Mr. Henderson offered the following resolution:

Resolved, That the Reporter receive the sum of ——— dollars for his services during the session; and further, that he receive the sum of ——— dollars for he completion of his reports, to be paid upon the certificate of the Secretary of the Convention, when the reports may be delivered to him.

Laid on the table one day for consideration.

Mr. Horton offered the following resolution:

Resolved, That the Secretary of the Convention be required to procure a well bound book, and record in the same the Journals of the Convention, together with the Constitution and the several Ordinances that may be adopted by the Convention; and that for his services while employed in recording, superintending the printing, and distribution of the journals, he shall be entitled to and receive the same pay per month as a chief clerk of a department, to be paid out of the contingent expenses of the Convention.

Which was laid on the table one day for consideration.

Mr. Hemphill moved to take up the report of the judiciary committee, upon the subject of the creation of new states. Lost.

Mr. Ochiltree, from the revising committee, to whom was referred the Schedule, reported various grammatical amendments and changes of phraseology, which were adopted. He also reported, that a majority of the committee had instructed him to recommend the following, to come in at the end of the 10th section:

"Provided, no act shall be performed under the provisions of this section, which would be inconsistent with the obligations which Texas has assumed by the acceptance of the terms of annexation, as contained in the Joint Resolutions of the United States' Congress, approved 1st March, 1845; and also the following additional section, to be sec. 18th:

"After the adoption of this Constitution by the people of Texas, the President shall have no power to enter into any treaty, compact or alliance with any power other than the United States."

The revising committee also recommend that the word "shall" be stricken out, and the word "may" inserted in the 4th section, so as to read "the Legislature *may* provide by law."

On motion of Mr. Cunningham, a call of the House was made; and,

On motion of Mr. Anderson, a further call was suspended.

The ayes and noes were then taken on the amendment of the committee, to insert the word "may" in lieu of the word "shall," and stood thus:

Ayes—Messrs. President, Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Henderson, Hicks, Horton, Stewart, Hunter, Irion, Jones, Love, Lusk, Lipscomb, Mayfield, McGowan, Miller, Navarro, Scott, Tarrant and Ochiltree—24.

Noes—Messrs. Armstrong of R., Bagby, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Forbes, Gage, Hemphill, Hogg, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, McNeil, Parker, Rains, Runnels, Smyth, Standefer, Van Zandt, White, Wright and Young—27.

So the amendment was lost.

The ayes and noes being called on the amendment suggested by the revising committee, to be inserted at the end of the 10th section, stood as follows:

Ayes—Messrs. President, Baylor, Brown, Caldwell, Cazneau, Forbes, Gage, Hogg, Horton, Stewart, Hunter, Irion, Jones, Love, Lipscomb, Mayfield, Parker, Runnels, Scott, Smyth, Standefer, White and Wright—23.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cuney, Darnell, Evans, Hemphill, Henderson, Hicks, Jewett, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McGowan, McNeil, Miller, Navarro, Rains, Tarrant, Ochiltree, Van Zandt, and Young—27.

So the amendment was rejected.

The ayes and noes being called on the second amendment suggested by the same committee, to prevent the President from entering into any treaty, compact, &c., after the adoption of the Constitution by the people, stood as follows:

Ayes—Messrs. President, Armstrong of R., Baylor, Brown, Bagby, Caldwell, Cazneau, Cunningham, Darnell, Forbes, Gage, Hemphill, Hogg, Horton, Stewart, Hunter, Irion, Jones, Latimer of R. R., Love, Lipscomb, Mayfield, Miller, Navarro, Parker, Runnels, Scott, Smyth, Standefer, Tarrant, White and Wright—33.

Noes—Messrs. Bache, Brashear, Burroughs, Clark, Cuney, Evans, Henderson, Hicks, Latimer of L., Lewis, Lumpkin, Lusk, McGowan, McNeil, Rains, Ochiltree, Van Zandt and Young—18.

Two-thirds not having voted for the amendment, the chair decided that a majority could adopt it, from which decision Mr. Henderson appealed.

Mr. Mayfield moved a call of the Convention. Lost.

The ayes and noes being called on sustaining the chair, stood as follows:

Ayes—Messrs. Baylor, Caldwell, Cazneau, Gage, Hogg, Hunter, Navarro, Runnels and White—9.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cunningham, Cuney, Evans, Forbes, Hemphill, Henderson, Hicks, Horton, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Miller, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—39.

So the appeal was sustained, and the amendment declared to be rejected.

Mr. Horton moved a re-consideration of the vote engrossing the Schedule,

Upon which the ayes and noes were called, and stood as follows:

Ayes—Messrs. President, Baylor, Brown, Caldwell, Cazneau, Cunningham, Forbes, Gage, Hogg, Horton, Hunter, Love, Mayfield, Navarro, Runnels, Scott, Standefer and White—18.

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Burroughs, Clark, Cuney, Evans, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Rains, Smyth, Tarrant, Ochiltree, Van Zandt, Wright and Young,—33.

Lost.

Mr. Lewis moved to suspend the rule, so as to place the Schedule on its 3d and final reading.

Mr. Mayfield moved a call of the Convention. Lost.

Mr. Mayfield moved to adjourn until half past 8 o'clock, to-morrow. Lost.

Mr. Mayfield moved a call of the Convention. Lost.

Mr. Mayfield moved to adjourn until 8 o'clock, to-morrow:

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Brown, Caldwell, Cazneau, Cunningham, Gage, Hogg, Irion, Mayfield, Navarro, Runnels and White—12.

Noes—Messrs. Armstrong of R., Baylor, Bache, Bagby, Brashear, Burroughs, Clark, Cuney, Evans. Forbes, Hemphill, Henderson, Hicks, Horton Stewart, Holland, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Love, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Miller, Parker, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—37.

Lost.

The ayes and noes were then called on the suspension of the rule, and stood as follows:

Ayes—Messrs. Armstrong of R Baylor, Bagby, Brashear, Burroughs, Clark, Cuney, Evans, Hemphill, Henderson, Hicks, Stewart, Holland, Hunter, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Miller, Parker, Rains, Scott, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt, Wright and Young—37.

Noes—Messrs. President, Bache, Brown, Caldwell, Cazneau, Cunningham, Forbes, Gage, Hogg, Horton, Love, Navarro, Runnels, and White—14.

So the rule was suspended.

Mr. Henderson moved to re-consider the vote just taken.

Mr. Hunter moved to adjourn until 8 o'clock, to-morrow morning. Lost.

The question was then taken on Mr. Henderson's motion to re-consider and lost.

Mr. Mayfield moved to re-consider the vote just taken.

On motion of Mr. Latimer of R. R., the motion to re consider was laid on the table.

Mr. Rusk offered the following as a substitute for the additional sections offered by Mr. Henderson to the Schedule:

In order to provide for submitting the question of the annexation of Texas to the United States, and the adoption of this Constitution to the people of Texas, and to provide for changing the present separate independent republican government of Texas, into a state government of the American Union: a poll shall be opened at the several precincts in the now Republic of of Texas, on the first Monday in October next, at which time and places the people of Texas shall vote *viva voce* for annexation, or no annexation. And upon the same day, and at the same places, a poll shall also be opened, wherein the people of Texas shall vote for the ratification or rejection of the Constitution of the State of Texas, *viva voce*, ratification or no ratification.

Upon the first Monday in December next, an election shall be holden by ballot, for a Governor, Lieutenant Governor, and Senators and Representatives to the Legislature of the State of Texas, in accordance with the apportionment made by this Constitution.

The President of the Republic of Texas is respectfully requested to issue his proclamation ordering the said elections, and the several chief justices of the respective counties of the Republic of Texas, or their associates be, and they are hereby required to cause the said elections to be hold n on the day, and at the several places designated as above: and should they fail, it shall be competent for the voters at any precinct to elect the manager and conduct said election. The said elections shall be holden as nearly as practicable, according to the rules prescribed by the laws of the now Republic of Texas for conducting elections. Triplicate returns of said election shall be made out, one transmitted to the Secretary of State of the Republic of Texas, one to the Speaker of the House of Representatives of the Legislature of the State of Texas, and one filed in the office of the clerk of the county court.

The first Legislature of the State of Texas, shall convene at the city of Austin, on the first Monday of January next, and proceed to organize under this Constitution; and after they shall have been organized, the Speaker, in the presence of both Houses, shall open the returns, cause the polls to be compared, and declare the election of the Governor and Lieutenant Governor, who shall forthwith be inaugurated, take the oath of office, and enter upon the discharge of the respective duties assigned them under this Constitution.

The said Legislature of the State shall proceed, as soon as they deem it proper, to elect Senators to the Congress of the United States, and to provide for the election of Representatives to the Congress of the United States, and of Texas.

It shall be the duty of the Legislature of the said State of Texas, forthwith after their organization, and they are hereby fully empowered and authorized so to do, to adopt the measures necessary thereto, and to cede to the United States all the public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, and armaments, and all other means pertaining to the public defence, belonging to the now Republic of Texas, and to transfer at as early a day as practicable, the Custom Houses, and to place such officers as may be appointed therefor, by the government of the United States, in the receipt of all revenue to be after such transfers, derived from impost duties, tonnage,

&c., and fully to do and to perform all acts and things necessary to complete our annexation to the government of the United States.

In order that no inconvenience or collision may arise from the contemplated change of government of Texas, the President of the now Republic of Texas, together with all officers civil and military of said Republic, shall continue in the execution of the functions of their several offices, under the laws of said Republic now in force, not inconsistent with the joint resolution for annexation, and in the receipt of all public dues, until the acceptance of our Constitution by the Congress of the United States, and until they be superceded by the officers of the State government, to be hereafter chosen by the government and people of Texas.

So soon as it shall be officially notified to his Excellency, the President of the now Republic of Texas, that the Congress of the United States have accepted the Constitution of the State of Texas, he shall forthwith surrender to the Governor of the State, all the public archives, documents, money, property and papers belonging to the Republic of Texas.

On the second Monday in November next, or sooner, if the returns shall be made of the votes for and against this Constitution, it shall be the duty of the President of this Republic to transmit to the President of the United States, two copies of this Constitution, duly authenticated, together with the evidence of its adoption, as required by the Joint Resolution of the Congress of the United States, one copy, of which shall be transmitted by mail, marked upon the envelope "Constitution of Texas," and one by special messenger.

Mr. Lusk moved to adjourn until 8 o'clock, to-morrow. Lost.

Mr. Hogg moved to adjourn until half-past 8 o'clock, to-morrow. Lost.

The ayes and noes being called on the adoption of the substitute offered by Mr. Rusk, stood as follows:

Ayes—Messrs. President, Baylor, Caldwell, Cazneau, Gage, Hogg, Horton, Love, Mayfield and Runnels—10

Noes—Messrs. Armstrong of R., Bache, Bagby, Brashear, Brown, Burroughs, Clark, Cunningham, Cuney, Darnell, Evans, Forbes, Hemphill, Henderson, Hicks, Stewart, Holland, Irion, Jewett, Jones, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, Lipscomb, McGowan, McNeil, Moore, Miller, Navarro, Parker, Rains, Scott, Standefer, Tarrant, Ochiltree, Van Zandt; Wood, White, Wright and Young—42.

So the substitute was rejected.

The report of the revising committee was taken up, and the grammatical corrections concurred in.

Mr, Brown offered the following as an additional section:

"That the Ordinance passed by the Convention on the 4th of July, assenting to the overtures for the annexation of Texas to the U. States, shall be attached to this Constitution, and form a part of the same."

Which was adopted.

The Schedule was then read a third time and passed.

On motion of Mr. Van Zandt, the Convention adjourned until 8 o'clock, to-morrow morning.

Wendesday, August 27, 1745.

The Convention met pursuant to adjournment.

Prayer by the Chaplain.

Roll called—quorum present—Journals of the preceding day read and adopted.

Mr. Gage presented the following protest, which was ordered to be spread upon the journals:

To the President of the Convention:

Sir—Availing myself of the right allowed to me by the rules of the Convention, I respectfully ask leave to present my most solemn protest against the adoption of the six last articles of the Schedule of the Constitution, as well as the manner in which they were passed. The subject of changing the present government of Texas to that of a state government, was referred by the Convention to a large and respectable committee, who had reported an ordinance for that purpose, which was not taken up by the Convention, but the present articles introduced, having never been before the Convention, were offered in a body as amendments to the Schedule upon its second reading. Consideration, discussion and amendments were cut off through their passage by the previous question. As soon as the last article was adopted, the previous question, as usual, was called for and carried, and the articles, without being read over, were ordered to be engrossed and referred to a committee, and in four hours reported back to the Convention with two important proposed amendments, one of which restrained the President from making treaties with foreign powers. The amendment was passed by a vote of 33 ayes to 18 noes, upon which a question of order was raised, that it required a majority of two-thirds to pass it. The President of the Convention decided that a majority was sufficient for its adoption, from which decision an appeal was taken to the House, who decided that a vote of two thirds was required to pass the amendment; thus by indirect measures defeating the express will of a majority, and leaving in the hands of the President a power incompatible with our relations and obligations to the United States.

I protest against the article 13th, because it leaves the whole power over the question of annexation in the hands of the President and his Cabinet, who it is notoriously known were opposed to the terms of annexation as proposed, and were only forced to act by the imperious demands of the people.

2d. Because it retains the present government, with its host of useless officers who are drawing money from the pockets of the people, without performing any material service.

3d. Because this government, which should have given place to a state government, will cost annually near two hundred thousand dollars more than a state government would have done.

4th. Because the people would have had full confidence in a state government, coming as it would directly from them, whereas they have none in the present government.

For these reasons, as well as many more which I have not time to give, I solemnly protest against the passage of said articles, and ask that this protest be entered on the journals.

D. GAGE.

I concur and join in the above protest as well for the reasons assigned as for many other valid ones that may be given.

J. S. MAYFIELD.

The committee of revision, W. B. Ochiltree, chairman, to whom was referred the ordinance relative to colonization contracts, reported the same back to the Convention, with various corrections of phraseology, &c., which corrections were concurred in by the Convention.

Mr. Love moved to strike out the words "in their inception," in the 1st section of the Ordinance.

Carried.

On motion of Mr. Love, the word "or" was stricken out, and the word "fraudulent" inserted.

In the 3d section of the Ordinance, Mr. Love moved to strike out the word "such," and also the words "in its inception."

Mr. Mayfield moved to amend by adding the words "or any person claiming, by or through them or either of them," after the word "contractors." Carried.

Mr. Lipscomb offered the following as an additional section:

And the Legislature are hereby restrained from extending any contract for settling a colony, and from relieving any contractor from the failure of the conditions or the forfeiture accruing from non-compliance with the contract.

Mr. Forbes moved the previous question.

The question—shall the main question be now taken? was put;

Upon which the ayes and noes were called; and are as follows:

Ayes—Messrs. President, Bache, Burroughs, Caldwell, Clark, Cunningham, Forbes, Hemphill, Hicks, Hogg, Horton, Stewart, Holland, Lewis, Lusk, Moore, Navarro, Runnels, Scott, Van Zandt and Wood—21.

Noes—Messrs. Anderson, Armstrong of R., Bagby, Baylor, Brashear, Brown, Cazneau, Evans, Hunter, Jewett, Jones, Latimer of L., Latimer of R. R, Love, Lumpkin, Lipscomb, Mayfield, McGowan, McNeil, Parker, Smyth, Standefer, Tarrant, Ochiltree, White, Wright and Young—27

So the motion for the previous question was lost.

Mr. Wright moved to strike out the last section of the Ordinance.

Mr. Forbes moved a call of the Convention. Lost.

The ayes and noes being called on Mr. Wright's motion to strike out, were as follows:

Ayes—Messrs. Armstrong of R., Baylor, Bagby, Evans, Stewart, Jones, Latimer of L, Latimer of R. R., Love, Lumpkin, Lusk, Lipscomb, Mayfield, McNeil, Parker, Runnels, Scott, Smyth, Standefer, Tarrant, White, Wright and Young—25.

Noes—Messrs. President, Anderson, Bache, Brashear, Brown, Burroughs, Caldwell, Cazneau, Cunningham, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Holland, Lewis, McGowan, Moore, Navarro, Ochiltree, Van Zandt and Wood—24.

Two-thirds not having voted for the amendment, it was rejected.

The ayes and noes being called on the adoption of the ordinance, stood as follows:

Ayes—Messrs. President, Armstrong of R., Burroughs, Caldwell, Gage, Hemphill, Hicks, Hogg, Horton, Stewart, Hunter, Jewett, Latimer of L., Lewis Lumpkin, Lusk, Lipscomb, Navarro, Parker, Runnels, Scott, Smyth, Standefer, Ochiltree, Wood, Wright and Young—27.

Noes—Messrs. Anderson, Bagby, Baylor, Bache, Brashear, Brown, Cazneau, Clark, Cunningham, Evans, Forbes, Holland, Jones, Latimer of R. R, Love, Mayfield, McGowan, McNeil, Moore, Tarrant, Van Zandt and White—22.

So the Ordinance passed.

Mr. Love offered the following as an additional article:

There shall be one General Land Office in the State, where all the original land titles of the Republic shall be registered, and such subordinate offices as the Legislature may from time to time establish.

On motion, the rule was suspended.

Mr. Anderson moved to insert after "state" the words "which shall be at the seat of government."

Adopted.

Mr. Rusk offered the following amendment:

Strike out the words "all the original land titles of the Republic," and insert "all titles which have heretofore emanated, or may hereafter emanate, from government.

Adopted.

Mr. Caldwell moved to strike out "shall" and insert "may," where it requires the titles to be registered.

Lost, and the article ordered to be engrossed.

On motion, the rule was further suspended, article read a third time and passed.

Mr. Hemphill offered the following article:

The Legislature shall, at its first session, provide for the application of the vacant lands within the limits of the state, or so much of the same as may be necessary to the payment of the debts and liabilities of the Republic of Texas.

On motion of Mr. Anderson, the article was laid upon the table.

Mr. Evans, from a select committee, made the following report:

Committee Room, Aug, 1845.

To the Hon. Thos. J. Rusk,
President of the Convention:

The committee, to whom was referred the resolution directing an enquiry into the land system of Texas, the amount of appropriated and unappropriated domain, various kinds of titles and claims located and unlocated, amount of forfeited lands, and lands owned by foreigners, and amount of patented lands, and in what counties, &c., have considered of heir duties and report.

Much of the information contemplated by the resolution, the committee was unable to obtain for the want of time and on account of some defect in the land office laws, which will appear by the accompanying letter from the Commissioner of the General Land Office. From this and other communications of the Commissioner—from an inspection of the records in the General Land Office, and other reliable sources of information, the committee is enabled to estimate the superficial extent of Texas at 397,319 sq. ml's.

The total amount of this which has been appropriated, the committee estimates as follows, to wit:

Amount issued by various Boards of Land Commissioners, and reccommended as genuine by Commissioners appointed to detect fraudulent land certificates,	30,019 "
Amount issued, and reported as spurious,	30,018 "

		sq. ml's.
Amount issued by War Department, as bounty and donation claims,	9,844	"
Amount issued by government and sold in land scrip,	578	"
Total amount issued by authorities of Mexico, which, appear upon the records of the General Land Office, 30,500 square miles; of this amount, as far as the records show, there appears to be valid claims to the amount of	19,500	"
Amount estimated to be invalid,	15,00	"
Amount issued by crown of Spain, and by the authorities of Mexico, located; or designed to be located within the old boundaries of Texas, of which there is no record or evidence in the General Land Office,	7,000	"
Amount claimed by the several empresarios, under the colonization laws of Coahuila and Texas,	1,388	"
Amount included within the limits of the several grants to contractors under the colonization laws of Texas,	46,000	"
Amount granted to Counties and Universities for Education,	1,457	"
The committee feel authorized to take into the estimate the appropriated lands in New Mexico, or Santa Fé, and other Mexican States on the Rio Grande. *Upon an inspection of maps and a fair* estimate of the population, the committee believes that 66,050 square miles a low estimate of lands on the east side of the Rio Grande. This country is claimed by Mexico and by the joint resolutions—the adjustment of all questions of boundary is left to the United States. Still this country does rightfully belong to, and is properly included within the limits of Texas, and the committee has full confidence that the United States will secure this country to Texas; yet it reasonably believes that the United States, in doing this, will secure the inhabitants of the country in the just possession of their lands,	66,000	"
Add the Cherokee claim, which is about	2,000	"
These several amounts swell the appropriated domain to	236,803	"
Which deduct from total, leaves to Texas, in public and unappropriated domain,	160,516	"

These estimates, it is believed, approximate very nearly to truth.

There is left to Texas an unappropriated country not sufficiently large to subsist the various tribes of Indians now inhabiting this country.

Texas will, doubtless, despoil the Indian of this country, whenever it shall be needed for the occupancy of civilized man.

But upon a survey of the progress of settlement in the southern and western states of the American Union, this country cannot be reached in the next quarter of a century. Should the regular overflow of population press upon this frontier at that period, and should the Indian title be extinguished, another quarter of a century must elapse before it can be filled up. Taking an average of the last period, the public domain of Texas cannot be sold at an earlier date than 1882. If it can be sold at that time for $1 25 per acre, the price of public lands in the United States, the public domain of Texas will be worth in the year 1882, $128,462,400

If the accounts of traders and travellers are entitled to credit, one-half of this country is suitable for the occupancy of the agriculturalist. Deducting then one-half for sterile wastes and mountain ranges, the present worth of this fund, at 6 per cent., will not meet the public debt of Texas.

It would seem to the committee, to be the imperious duty of the Convention to reclaim from the unjust and unprincipled speculator, those large districts and tracts of country.

L. D. EVANS, **Chairman.**

On motion of Mr. Darnell, the report was laid on the table for the present.

On motion of Mr. Hemphill, the article offered by himself applying the vacant lands to the payment of public debts, &c., was taken up.

Mr. *Hemphill* said: This is drawn up almost in the words of the joint resolutions. The great difficulty in the way of our being admitted under the treaty, was said to be the great amount of their debt. I have seen it estimated as high as 180 millions of dollars. Our debts, liabilities and lands were the only objects treated as of any importance at all. If we leave out this very important subject, I do not know what effect it may have. Whilst we have taken some action with regard to arms and armaments, which the government of the United States cares nothing about, we have done nothing as yet with regard to this matter. From every suggestion which has been thrown out by the agents of the United States, it is my conviction that the government thinks it important that we should show some desire to pay our debts by means of our lands.

Mr. Hemphill moved a suspension of the rule.

Mr. *Darnell* said: I am opposed in the first place to the adoption of the resolution; and, in the second place, to the suspension of the rule. It may perhaps be found necessary for this government to pay its debts with the national domain? I think it probably will; but I am not now prepared to vote for a declaration that the public domain shall go for that purpose; and I cannot agree with the gentleman from Washington that it is at all obligatory upon this government to take such action. The resolutions only contemplate that in no case shall the United States become responsible for our debt. I want to leave this matter entirely to the Legislature.

Mr. *Baylor* said: I hope the resolution will prevail. I consider this matter as vastly more important than it is considered by the members of this Convention. There is a large class of claimants interested in it, and if we adjourn without paying some attention to it, and providing some means to pay our just debts, it will be a matter of reproach to the character of the country hereafter. So far as the interest of the country is concerned, I feel extremely solicitous that this resolution should prevail. For, mark my words, sir, unless this mandatory clause is fixed in the Constitution, the system of general peculation and plunder will go on, and the result will be that posterity will have to be taxed to pay the national debt. I wish at all events that we should remember our debts, and be mindful of the claims of those who stood by the country in her trying and dark hours; and above all, I am solicitous that the Legislature shall be compelled to set aside the public domain for the payment of our honest debts; for, unless this is done, the whole of it will be squandered away; and I solemnly believe that never will an acre of land go towards the payment of the public debt, unless we secure it now.

Mr. *Moore* said; I have been absent, and was not aware that this question had not been acted upon. I am sorry to learn that it has been deferred to this late day, and I do hope that the motion to suspend the rule will prevail. I consider that no question can come up of more importance than these relating to the national debt. To my mind it seems highly important somewhere to express the sense of this Convention, that the public debt should be liquidated. I believe that the people of Texas are as honest and upright as any, in any part of the world, and I believe they will sustain their representatives in any thing they may do to redeem the honor and faith of the nation. We have the means in our power to liquidate our debt, and we could not apply them to better advantage. I am too feeble to make many remarks, but I am confident there is honesty enough in this Convention to carry out the views of the people upon this subject to the fullest extent.

Mr. *Love* said: I look upon it as the wildest supposition in the world to think that we can pay the public debt by means of our public lands. I am sure that upon reflection, gentlemen will perceive that the principal of our debt never can be liquidated by means of the public domain to all eternity; because the amount of lands which will be taken and paid for in a century, will never be sufficient for the payment of the interest. The public lands, sir, will never pay for surveying them. The wisest disposition which can be made of them is just the old head-right law, to give them to every man who comes into the country, and make him pay taxes upon them, and by means of these taxes, you may perhaps pay the debt.

Mr. *Mayfield* said: I generally agree with the gentleman from Galveston, more especially in matters of finance; but I differ with him materially upon this subject. I think it seems to be the duty of the Convention to make a provision of this kind; and I have full faith in the honesty of the people, and their ability and disposition to pay their public debt. Because I honestly do believe that there will be measures adopted which will reclaim to the state of Texas not less than forty or fifty millions of acres of the public domain. If then this quantity of land is disposed of at only twenty-five or thirty cents per acre, it will pay the entire public debt with the interest thereon, and leave something for the support and maintenance of free public schools. I believe then for my own part in the entire ability of Texas to pay her public debt. I believe that she has sufficient rich soil unappropriated, and which will be re claimed from the hands of the fraudulent and designing speculators, to redeem all her debts and liabilities, and leave a surplus to be disposed of as necessity and interest may demand.

Mr. *Mayfield* made some further remarks, as also Messrs. *Runnels*, *Hemphill* and *Young*.

The ayes and noes were called upon the motion to suspend the rule, and are as follows:

Ayes—Messrs. Baylor, Bache, Brown, Caldwell, Cunningham, Darnell, Evans, Forbes, Hemphill, Hogg, Horton, Stewart, Hunter, Love, Lipscomb, Moore, Navarro, Parker, Rains, Smyth, Standefer and White—22.

Noes—Messrs President, Anderson, Armstrong of R., Bagby Brashear, Burroughs, Cazneau, Clark, Gage, Jewett, Jones, Latimer of L., Lumpkin, Mayfield, McGowan, McNeill, Runnels, Tarrant, Ochiltree, Wright and Young—21.

Two-thirds not having voted for a suspension, the motion was lost.

Mr. Forbes moved to adjourn until 3 o'clock, P. M. Lost.

Mr. Jones moved to adjourn until 4 o'clock. Lost.

On motion of Mr. Cunningham, an enrolling committee of three was appointed to examine the enrolled copy of the Constitution.

Mr. Evans offered the following article:

"The Legislature shall prescribe such rules of evidence as will guard and protect the state and the tenant or settler in possession against unjust, forged, fraudulent, forfeited, void or voidable land claims, against claims owned or claimed by aliens, and against illegal locations or surveys.

On motion of Mr. Runnels, the Convention adjourned until 4 o'clock, P. M.

4 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

The chair announced the following special committee, to superintend the enrolling, &c., and printing of the Constitution:

Messrs. Hemphill, Smyth and Caldwell..

On motion of Mr. Jewett, the resolution for the compensation of the Reporter was taken up.

On motion of Mr. Rusk, the first blank was filled with $5 per diem; and,

On motion of Mr. Anderson, the second blank was filled with four hundred.

The ayes and noes were then called on the adoption of the resolution, and stood as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bache, Burroughs, Caldwell, Cazneau, Cunningham, Evans, Forbes, Gage, Hemphill, Henderson, Hogg, Horton, Stewart, Holland, Jewett, Jones, Lewis, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, McNeil, Miller, Navarro, Parker, Runnels, Smyth, Standefer, Tarrant, Ochiltree, White and Wood—38.

Noes—Messrs. Bagby, Clark, Hicks, Latimer of R. R., Rains, Scott and Young—7.

Mr. Love offered the following resolution:

Resolved, That Thomas J. Rusk, the President of the Convention, has the approbation and the thanks of the Convention, for the promptness, fidelity and impartiality with which he has discharged the arduous and responsible duties of his office; and that he carries with him in his retirement the confidence and respect of the Deputies of the Convention.

On motion, the rule requiring the resolution to lie on the table one day for consideration, was suspended, and the resolution *unanimously* adopted.

On motion of Mr Anderson, the resolution of yesterday, requiring the Secretary of the Convention to procure a well bound book, and record the journals of the same, &c., was taken up and read.

Mr. Lipscomb offered the following as a substitute:

Resolved, That Joseph Waples be, and he is hereby authorized to record the journals and proceedings of the Convention in a bound book; and that he be paid at the rate for said services as was allowed for copying and superintending the printing of the journals of the last Congress, out of the appropriation for defraying the expenses of the Convention,—the same when completed, to be deposited in the office of the Secretary of State.

Which was rejected.

Mr. Young offered the following as a substitute:

Resolved, That the Secretary of the Convention be instructed to have bound in one volume, the Journals and Ordinances of this Convention, and file the same in the Department of State, and that he receive the sum of ——— dollars.

Upon which the ayes and noes were called, and stood as follows: Ayes—Messrs. Evans, Latimer of R. R., Bagby, Rains, Scott and Young—6.

Noes—Messrs. Anderson, Armstrong of R., Baylor, Bache, Caldwell, Cazneau, Clark, Cunningham, Forbes, Gage, Hemphill, Hicks, Hogg, Horton, Stewart, Hunter, Jewett, Latimer of L., Lewis, Love, Lumpkin, Lusk, Mayfield, McGowan, McNeil, Miller, Moore, Navarro, Parker, Runnels, Smyth, Standefer, Tarrant, Ochiltree, Van Zandt and White—36.

So the substitute was rejected.

The question was then taken on the original resolution, which was adopted.

On motion of Mr. Bache, the resolution of yesterday, giving extra compensation to the Post Master of Austin, for his services during the session of the Convention, was taken up.

Mr. Bache moved to fill the blank with $100.

Ayes—Messrs. President, Anderson, Armstrong of R., Bache, Caldwell, Cazneau, Forbes, Hemphill, Stewart, Hunter, Irion, Jewett, Jones, Lewis, Love, Lipscomb, Mayfield, McGowan, McNeil, Miller, Navarro, Rains, Tarrant, Ochiltree and White—25.

Noes—Messrs. Baylor, Burroughs, Clark, Cunningham, Evans, Gage, Hicks, Hogg, Horton, Latimer of L., Latimer of R. R., Lumpkin, Lusk, Moore, Parker, Scott, Smyth, Standefer, Wright and Young —20.

So the blank was filled with $100, and the resolution was adopted.

Resolved, That the Secretary shall superintend the distribution of the volume of the reports to be prepared by the Reporter of the Convention, and that two hundred and fifty volumes of the reports be printed.

On motion, the resolution was laid on the table.

Mr. Lewis offered the following resolution:

Resolved, That after the adjournment of the Convention, all accounts which may be authorized by the Convention to be contracted, such as printing, &c., and which cannot, from the nature of the circumstances, be signed and countersigned by the President and Secretary of the Convention before the President should leave, a certificate of the Secretary above shall be sufficient evidence of the correctness of the account; and the Treasurer of the Republic will pay upon the same.

Resolved further, That the Secretary of the Convention shall, as soon as the journals are published, distribute to each member of the Convention, to the Chief Justices of the several counties, to each member of the 9th Congress of the Republic of Texas, to the President and Heads of Departments of the Republic of Texas, and to the President and Heads of Departments of the United States a copy of the same; and in order to facilitate the distribution of the Journals in the East and North, the Secretary is authorized to convey by private means the number of copies required for that section of the country.

And the Secretary is further required, so soon as the records of the Convention are brought up, to deposit the same, together with the enrolled copy of the Constitution and the Ordinance adopted, also the printed Journals remaining after the distribution as above, in the office of the Secretary of State of the Republic of Texas.

On motion, the rule was suspended.

Mr. Forbes moved that the members of the 9th Congress be stricken out. Lost.

On motion of Mr. Cazneau, the resolution of Mr. Ochiltree of yesterday, giving extra compensation to the officers of the Convention, was taken up.

Mr. Scott moved to strike out "$5" and insert "$4."

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. Bache, Bagby, Clark, Cunningham, Hicks, Hogg, Stewart, Jones, Lewis, McNeil, Parker, Rains, Scott, Smyth, Standefer and Young—16.

Noes—Messrs. President, Anderson, Armstrong of R., Baylor, Brashear, Burroughs, Caldwell, Cazneau, Forbes, Hemphill, Henderson, Horton, Hunter, Irion, Jewett, Latimer of L., Latimer of R R, Love, Lumpkin, Lusk, Lipscomb, Mayfield, McGowan, Navarro, Ochiltree and White—26.

The question was then taken on the adoptian of the resolution and carried.

Mr. Rusk moved that the interpreter be allowed $4 per diem.

Upon which the ayes and noes were called; and stood as follows;

Ayes—Messrs. President, Armstrong of R., Baylor, Brashear, Cazneau, Evans, Forbes, Hemphill, Hunter, Irion, Jewett, Jones, Love, Mayfield, McGowan and Parker—16.

Noes—Messrs. Anderson, Bache, Bagby, Burroughs, Clark, Cunningham, Darnell, Henderson, Hicks, Hogg, Horton, Stewart, Latimer of L., Latimer of R. R., Lewis, Lumpkin, Lusk, McNeil, Rains, Scott, Smyth, Standefer, White, Wright and Young—25.

Lost.

On motion of Mr. Darnell, the resolution authorizing Mr. Burroughs to receive the pay of Mr. Oliver, &c., was taken up and adopted.

On motion of Mr. Burroughs, the Convention adjourned unlil 8 o'clock, P. M.

8 o'clock, P. M.

The Convention met pursuant to adjournment.

Roll called—Quorum present.

Mr. Mayfield offered the following resolution:

Resolved, That the door-keeper be allowed the sum of one dollar per day for furnishing water, &c., for the use of the Convention, to be paid out of the contingent fund of the same.

On motion of Mr. Mayfield, the rule was suspended. and the resolution adopted.

Mr. Parker offered a resolution allowing mileage from the city of Houston to George Fisher, interpreter.

Mr. Young moved to amend, by inserting the names of Dr. John S. Ford, Dr. S Peters, Edwin Moorehouse and Daniel D. Culp. Which amendment was adopted.

The question was then on the resolution, which was rejected.

Mr. Love moved to adjourn until 8 o'clock, to-morrow. Lost.

Mr. Cazneau moved to adjourn until half-past 7 o'clock, tomorrow. Lost.

On motion, the Convention adjourned until 7 o'clock, to-morrow morning.

Thursday, August 28, 1845.

The Convention met pursuant to adjournment—Roll called—Quorum present—Journals of the preceding day read and adopted.

Mr. Jewett presented the following, which was ordered to be spread upon the Journals:

Committee Room, August 28, 1845.

To the Hon. T. J. RUSK,
President of the Convention:

We, the undersigned, members of the select committee on the land titles, &c., of the Republic, not having had sufficient time, nor sufficient data to investigate the subject, dissent from many of the conclusions of the report made by the Hon. L. D. Evans, chairman of said committee.

JOHN HEMPHILL,
HENRY J. JEWETT,
GEO W SMYTH,
JOHN D. ANDERSON.

Aug. 27, 1845.

Mr. Lipscomb offered the following resolution:

Resolved That Thomas William Ward, Esq, Commissioner of the General Land Office, for the faithful discharge of his duties, and the prompt and satisfactory manner in which he has responded to the calls made on him, is justly entitled to the thanks of the Convention.

On motion, the rule was suspended, and the resolution adopted.

Mr. Hemphill, from the select enrolling committee, made the following report:

Committee Room, Aug. 28th, 1845.

To the Hon. THOMAS J. RUSK,
President of the Convention:

The committee appointed to superintend the enrollment of the Constitution, have examined its various provisions, as they are enrolled, and comparing the same with the engrossed copy, have found the Constitution to be correctly enrolled.

JOHN HEMPHILL, Chairman.

Which report was adopted.

Mr. Horton moved that the Convention take up the resolution of yesterday, requiring 250 copies of the Reports of this Convention to be printed.

Upon which the ayes and noes were called, and were as follows:

Ayes—Messrs. President, Anderson, Armstrong of R., Baylor, Bache, Brashear, Brown, Caldwell, Cazneau, Cunningham, Darnell, Evans, Forbes, Gage, Hogg, Horton, Stewart, Holland, Jewett, Jones, Lewis, Love, Lusk, Lipscomb, Mayfield, Mc'Gowan, Navarro, Parker, Ochiltree and White—30.

Noes—Messrs Burroughs. Bagby, Clark, Cuney, Hicks, Hunter, Latimer of L., Latimer of R. R., McNeil, Miller, Rains, Scott, Smyth, Standefer, and Young—15.

So the resolution was taken up, read and adopted.

On motion of Mr. Latimer of R. R., the Delegates to the Convention proceeded to sign the Constitution.

Mr. Lewis offered the following resolution:

Resolved, That the thanks of this Convention are hereby tendered to James M. Long, for the admirable manner in which he has executed the enrollment of the Constitution of the State of Texas, and that he be paid the sum of $100 for the same.

Rule suspended, and resolution adopted.

Mr. Parker offered the following resolution:

Resolved, That the committee on printing be authorized to continue the subscription to the New Era, until the publication of the journals are completed in said paper, and that the publishers forward to the members of the Convention the number each member is entitled to.

Rule suspended, and resolution adopted.

On motion of Mr. Horton, the whole proceedings of this morning, together with the Constitution as enrolled, was ordered to be spread upon the journals.

The question was then taken on the final passage of the Constitution, which was carried *unanimously*.

On motion of Mr. Mayfield, the Secretary of the Convention was required to transmit a copy of the Constitution to the President of the Republic of Texas, and one copy to the President of the United States.

The President of the Convention arose and delivered the following address:

Gentlemen of the Convention;—

Before putting the motion of final adjournment, allow me to return you my most sincere thanks and acknowledgments for the honor conferred upon me by the passage of the resolution yesterday, coming as it does from such a body. I shall cherish it, gentlemen, as long as life shall last with me, and transmit it to my children as a bright inheritance which the poor services of their father little merited. Our labors have now drawn to a close. The important duties we were called upon to perform, on the part of the people of Texas, are discharged, and I trust in a manner which will be satisfactory to all the people of Texas, satisfactory to the Congress and people of the United States, and satisfactory to the friends of Republican government throughout the civilized world. We are about, after a short season, considering the immense labor performed to adjourn. We are about again to go and mingle among our constituents, many of us never again to take part in political strifes, or to be engaged in political action. The proceedings of this Convention, I think I may safely say without vanity or any undue prejudice in favor of Texas, our adopted land, may well compare with those of any similar body which has met within the last hundred years. They have been marked by a degree of decorum, and a spirit of good feeling, which I trust in God will continue to characterize the people of Texas, as long as our country shall endure. In the ardor of debate, from the difference of opinion which may have existed with regard to some principle adopted in this Constitution, for a moment the feelings of gentlemen may have been slightly excited; I am glad to see that all this has passed away; I am glad to see that the spirit of harmony, and good feeling, and the emotions of patriotism which were manifested upon the first day of our meeting, have continued to preside over our deliberations, until this the day of our adjournment: And I trust they will continue to exist in our bosoms, and that whether separated or together, we shall ever entertain towards each other those kind feelings which have been manifested here. I trust that each member of this Convention will carry them home to his constituents, and do all in his power to make this Constitution as acceptable as possible to the people, in order that it may appear to the government of the United States, that we go into the Union in the proper manner, and that the vile slanders hurled against us by our enemies. that we are a band of disorganizers, is false and foul.

I trust, too, that when this Constitution shall go into operation, the angry passions attendant upon political dissensions will be hushed, that all sectional feelings and jealousies, and the strifes of personal ambition will cease, and that for many long years to come, it will continue the organic law of a people united as a band of brothers, animated by the best feelings of the human heart, and prompted in action by that pure and lively patriotism which has characterized Texas thus far.

In my retirement, I carry with me the best feelings for each one of you, and the warmest desires for your success and the success of Texas.

On motion of Mr. Latimer, of Red River, the Convention adjourned *sine die.*